Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

October Term, 1995

JACK DAVID KELLY, Individually, as the Original Sole Owner of MAPLE LEAF DEVELOPMENT CORPORATION and as the President/Chairman and Shareholder of MAPLE LEAF DEVELOPMENT CORPORATION, "PRO SE",

Petitioner,

versus

TREE FARM DEVELOPMENT CORPORATION; EMORY O. WILLIAMS, JR.; THE ESTATE OF GEORGE G. PHILLIPS, JR.; E. D. BOB PIERCE; and THE ESTATE OF ABRAHAM L. PIERCE,

Respondents.

Petition For Writ Of Certiorari To The Supreme Court Of Florida

PETITION FOR WRIT OF CERTIORARI

JACK DAVID KELLY, Pro Se
3331 Summit Blvd., #87
Pensacola, FL 32503
(904) 438-4785
Petitioner, Pro Se

QUESTIONS PRESENTED FOR REVIEW

Whether the actions of the Florida courts violated and deprived Jack David Kelly, individually, as the original sole owner, the president/chairman and shareholder of Maple Leaf Development Corporation, their rights under the United States Constitution, State Constitution and Florida Statutes?

Did the lower courts of Florida violate the above petitioner's rights by improperly allowing the issue of title to property to be considered or that it even existed when the first filed case and it's action of declaratory judgment with accounting and specific performance to set aside a proposed merger agreement contract?

Based on the questions above were the following rules recognized and carried out in insuring the rights of the petitioner?

1.) Article III.2.1 - Principle 169

2.) Article III.2.1 - Principle 170

3.) Rule 14-1.(h)

4.) Principle 254 from the Fourteenth Amendment.

5.) Florida Constitution, Article 1, Section 9 - "No person shall be deprived of life, liberty or property without due process of law..."

6.) Article 1, Section 21 - "The courts shall be open to every person for redress of any injury and justice shall be administrated without sale, denial or delay"

7.) Article 1, Section 22 - "The right of trial by jury shall be secure to all and remain inviolate."

NOTATION AS REQUIRED BY RULE 29.6

There is no parent or subsidiary company to be listed.

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JURISDICTION

The date of the judgment or order sought to be reviewed was entered September 6, 1995.

Pursuant to 28 U.S.C. and Rule 10.1 - The Supreme Court of the United States has discretionary power to review final orders of a states' highest court of last resort.

Market Street R. Co. v. Railroad Commission, 324 U.S. 548, 551 (1945).

This court has held that to be reviewable, the state court judgment "must be final", it must be the final word of the final court.

This petition for Writ of Certiorari is timely filed and therefore this court does have jurisdiction pursuant to Rule 13 of the Rules of the United States Supreme Court.

Pursuant to 18 U.S.C. § 1001 provides:

"Whoever in any manner within this jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Article 1, Section 9, "No person shall deprived of life, liberty or property without due process of law."

Article 1, Section 21 - "The courts shall be open to every person for redress of any injury and justice shall be administrated without sale, denial or delay."

Article 1, Section 22 - "The right of trial by jury shall be secure to all and remain inviolate."

The state court of last resort has decided important federal questions in a way that conflicts with the decision of other state courts of last resort and of the United States Courts of Appeal.

Thereby satisfying the applicable statutory and regulatory requirements of Rule 10 of the Supreme Court of the United States that demands that this honorable court exercise it's supervisory power for redress the improper treatment of this case in the Florida

courts.

Due process of law is another descriptive name for proper legal, judicial and governmental fair play in dealing with their people. The lower court's decision in fact denies the petitioner's their constitutional rights of due process of law. Thereby denying all civil and constitutional rights of the appellant, plaintiff Jack David Kelly, individually, as the original Sole Owner of Maple Leaf Development Corporation, the president/chairman and shareholder of Maple Leaf Development Corporation.

Rule 28. Oral Argument - Rules of the Supreme Court of the United States

Rule 27. Calendar - Rules of the Supreme Court of the United States

Rule 27. Calendar 3 - Rules of the Supreme Court of the United States

Other material facts the petitioner believes essential to understanding the petition, particular Points of Constitutional, State Law and Facts. Constitutional Tort Federal and State Statute provides that every person who under color of any statute, ordnance, regulation, custom or usage of any state or territory, subjects or causes to be subjected, any citizen of the United States or any other person thereof to the deprivation of any rights, privileges or immunities secured by the constitution's provisions and state laws, shall be liable to the party injured in an action at a lawsuit in equity or other proper proceeding for redress.

42 U.S.C.A. § 1983

§ 57.105 (1) Florida Statute, an attorney is personally responsible for his conduct unless he in good faith based upon representation of the client.

1.) The violation of obligation by which damages accrues.

2.) Violation based on breech of the implied and written covenant of good faith and fair dealing.

3.) Breech of contract, breech of trust and fair dealing.

K-Mart Corp. v. Pancock, 103 NEV. 39, 732 p.2d 1364, 1368.

The lower court returned a wrongful final summary judgment by general statements of the defendants and their attorney, by which the decision plainly shows that the lower court judge was clearly prejudicial, bias and without authority (color of law). The lower

court could have not possibly concluded factually, that the facts thereof was verified in existence. In other words, questions of this type of interrelated cases and facts is to be determined by the trier of the fact (a jury) that may decide on all the issues and the law itself not by a lower court judge in a summary judgment in violation of plaintiff's constitutional rights of a trial by jury, this fundamental right is basic to our concepts of justice, it means essentially that trials are held and cases decided by the people, not by the government, they have the power not only to decide the facts in a case but also to decide on the validity of the law itself. The most important way juries have been a bulwark against tyranny.

Citing the Zenger case of 1735.

It is the best cause. It is the cause of liberty. It may in its consequence affect every free man. The jury has the right to judge both the law as will as the fact in controversy.

Citing Pete Mitchell and Company vs. Lane, 565 SO. 2d 1322, Florida, the last element to occur is damages, and it does not occur until the completion of the litigation of the cause of action. In other words, the statute of limitation does not begin to run until that specific case and cause of action is litigated to a conclusion. Therefore the lower court judges, judgment was without a doubt prejudicial, bias and without authority (color of law).

Citing Erskine vs. Upland, 56 JL. App. 2d, 132 p 2d. 218, 228, the lower courts decisions may be grounds for a new trial and reversal of judgment.

Additional grounds for jurisdiction is that it is necessary to ensure decisional harmony within the courts and for that reason (grounds), it is of exceptional importance and that such consideration by petition for Writ of Certiorari is necessary to maintain uniformity in the court's decisions and that intra-district conflicts of decisions exist proven by all the hereto cited cases above and this instant case's final judgment by the lower courts that is certainly not in harmony of any of the authorities cited in the table of authority and plainly and clearly supports the argument hereof.

Citing Rule 9.331 (c)(1) - Determination of causes in a district court of appeal en banc.

<u>As Further Substantial Grounds, and Additional Facts</u> that necessitates the Writ of Certiorari and demands that the Supreme

Court of the United State exercise it's supervisory powers concerning the continuing fraud, concealment and misrepresentation.

The original order entered by the Leon County, Florida Circuit Court Judge that is before this court was entered after a brief hearing, the complaint sought a declaratory judgment determination of the statutes of a proposed merger document improperly on file with the Secretary of State, Tallahassee, Leon County, Florida.

Ther merger document purported to create or effectuation a merger between Maple Leaf Development Corporation and Tree Farm Development Corporation. A complaint was filed seeking declaratory relief to set aside the purported merger, a demand was inserted concerning rights to real estate. Count II was inserted contrary to instructions, this issue concerning real estate was to have been determined subsequent, if needed in a second action to the setting aside of the purported merger.

Pursuant to Rule 27. Calendar - Rules of the Supreme court of the United States.

Two or more cases involving the same or related questions be argued together as one case or on such other terms as the court may prescribe.

1.) Rehooker's Estate, 173 Misc. 515, 18 N.Y. 8. s 2d 107, 110. - a plain error rule.

For clarification of the facts and law that had to be performed under the laws of the state of Florida for the proposed merger between Maple Leaf Development Corporation and Tree Farm Development Corporation to be effective have wholly failed according to the terms of the proposed merger agreement contract and none of the time, conditions or covenants were met of relevance intertwined controlling requirements of ultimate facts of case no. 79-1862-CA-01, Division "E", Pensacola Loan & Savings Bank, now known as the Horizon Bank of Pensacola, v. Emory O. Williams, Jr., Abe Pierce, E. D. Pierce, George Phillips, Jr., and Tree Farm Development Corporation, a foreign corporation et., UX ET, extending, accruing to September 14, 1990 and on even unto this date.

All the principles in this case Emory O. Williams, Jr., Abe Pierce, E. D. Pierce, George G. Phillips, Jr., and Tree Farm

Development Corporation, a foreign corporation, had the responsibility of performance of the proposed merger agreement contracts time, conditions and covenants of intertwined requirements of case no. 79-1862-CA-01, Division "E", by the requirements of the Florida Corporation Act that had to be performed by those identified for the proposed merger to be effective.

Said case has been in the process of maturing into right of a matured cause of action, accruing in relevance, controlling ultimate facts to the proposed merger agreement contracts between Jack David Kelly, individually, as the original sole owner of Maple Leaf Development Corporation and as president/chairman and shareholder of Maple Leaf Development Corporation by identified for the proposed ownership of share of Maple Leaf Development Corporation and for the proposed merger agreement contracts to be effective, the terms of the proposed merger agreement contracts have wholly failed and none of the time, conditions or covenant were met. Therefore it is plain and clear that statutes of limitations could not possibly begun to run during this accruing period; arising by way of increase or augmentation.

Citing Globe Indemnity Co. v. Broce, CCA. OKL., 81 F .2d 143, 153.

Again, see accruing, augmentation process of the intertwined, any interrelated case no. 79-1862-CA-01, Division "E", Pensacola Loan & Savings Bank, now known as the Horizon Bank of Pensacola, US. Emory O. Williams, Jr., Abe Pierce, E. D. Pierce, George Phillips, Jr., and Tree Farm Development Corporation from 1979 until 1990.

Said case has been in care of Philip A. Bates, the self same attorney for Tree Farm Development Corporation deliberately concealing relevance, ultimate, controlling facts in this related, intertwined instant case that is hereby petitioned for a Writ of Certiorari to the Honorable Court of the United States.

These essential, controlling, intertwined documents of ultimate facts are needed for clarification.

Rehooker's Estate, 173 Misc. 515, 18 N.Y.S. S.2d 107, 110.

People Ex Rel., Hudson & M.R. Co. v. Sexton, Sup. 44, N.Y.S. 2d 884, 885.

O'Shea v. Hatch, App. 97 N.M. 409, 604 p.2nd 515, 520.

Peoples v. Braslau's Furniture Co., TEX Div. App., 493 S.W. 2d 638, 640.

If there is even a scintilla of evidence presented to support the non moving party and position, summary judgment should not be granted.

Chinlette v. Smith, ALA 374 SO. 2d 872, 873

Scintilla of Evidence Rule. A metaphorical expression to describe a very insignificant or trifling item or particle of evidence at all in a case, even a mere scintilla, tending to support a material issue, the case cannot be taken from the jury but must be left to their decision.

Citing Wilson v. Liberty Nat. Life Ins. Co., ALA 331 SO. 2d 617, 619.

Article V. - Section 3 Supreme Court

(b) Jurisdiction - The Supreme Court;

(1) Shall hear appeals from final judgments of trial courts imposing the death penalty and from decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution.

The lower court, the Supreme Court of the State of Florida, the court of last resort of the state of Florida has declared invalid the above provision of the state constitution. Therefore the Supreme Court of the United States does have jurisdiction. In support for granting the petitioner Writ of Certiorari, the opponent failed to plead ultimate facts as required by:

Rule 1.110 Florida Rules of Civil Procedure.

Ultimate facts, issuable facts; facts essential to the right of action or matter of defense.

Citing Allied Stores of Texas, In.c v. McClure, Tex. Civ. App., 595 S.W. 2d 165, 169.

Facts necessary and essential for decision by court.

People Ex Rel., Hudson & M.R.S. Co. v. Sexton, Sup. 44, N.Y.S. 2d 884, 885.

Facts which are necessary to determine issues in case, as distinguished from evident facts supporting them.

O'Shea v. Hatch, App. 97 N.M. 409, 604 p.2nd 515, 520.

Mining Securities Co. v. Wall, 99 MONT. 596, 45 p.2d 302,

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William v. Pilot Life Ins. Co. 288 H.C. 338, 218 S.E. 2d 368, 371.

One that is essential to the right of action or matter of defense and the courts is under duty of submitting only ultimate or controlling issues.

Peoples v. Braslau's Furniture Co., TEX Div. App., 493 S.W. 2d 638, 640.

Citing 28 U.S.C. § 2403(b) may apply and shall be served on the Attorney General of the State (Florida).

South Florida Water Management District v. Muroff, 450 So.2d 1258 (Fla. 4th DCA 1984); Gutterman-Musicant-Kreitzman, Inc. v. I.G. Realty Company, 426 So.2d 1216 (Fla. 4th DCA 1983). It is well settled that if a plaintiff moves for summary judgment prior to defendant's filing an answer, the movant must demonstrate conclusively and to a certainty from the record that the defendant cannot plead or otherwise raise a genuine issue of material fact.

Therefore, in this instant case, it would be impossible to determine whether the defendant's affirmative defenses might give rise to a genuine material fact. Indeed it appears possible that the defendant could have fled or otherwise raised a genuine issue of fact. Therefore the final judgment should be reversed and remained to the trial court for further proceedings.

Wherefore this honorable court's jurisdiction does exist for this honorable court to exercise its jurisdictional power and exercise its supervisory priority to grant this Writ of Certiorari.

In protection of the Constitution of the United States, the State of Florida, and true legal procedure.

CONSTITUTIONAL PROVISIONS INVOLVED:

Pursuant to 28 U.S.C. and Rule 10.1 - The Supreme Court of the United States has discretionary power to review final orders of a states' highest court of last resort.

Pursuant to 18 U.S.C. § 1001 provides:

"Whoever in any manner within this jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Article 1, Section 9, "No person shall deprived of life, liberty or property without due process of law."

Article 1, Section 21 - "The courts shall be open to every person for redress of any injury and justice shall be administrated without sale, denial or delay."

Article 1, Section 22 - "The right of trial by jury shall be secure to all and remain inviolate."

Article III.2.1 - Principle 169

Article III.2.1 - Principle 170

Rule 14-1.(h)

Principle 254 from the Fourteenth Amendment.

Pursuant to the above, the Supreme Court has the discretionary power to review final orders of a state's highest court of last resort that has deprived an individual his rights guaranteed by the United States Constitution. The decree sought to be reviewed was entered September 6, 1995.

CONCISE STATEMENT FOR FURTHER CLARIFICATION AND EXPLANATION

The attorney for the defendants, Tree Farm Development Corporation, in this first filed case deliberately, wrongly represented to the lower Florida courts that the declaratory action filed by Jack David Kelly, individually, as the original sole owner, the president/chairman and shareholder of Maple Leaf Development corporation involved title to real estate which as it is plain to see title to property could not possibly be considered first. Therefore, the title action filed by Tree Farm Development Corporation and their attorney was improper and illegal in any proper and legal due process of law procedure. This representation to the court was wrong and it was made for the purpose of misrepresentation. The defendant counsel knew that the first action could not possible involve title, but that it had to only involve a declaratory judgment action that required accounting and specific performance in undoing the purported merger contrary to the true facts above the defendants and their counsel knowing falsely represented it was a complaint seeking resolution of title. The Leon County, Florida judge used this misrepresentation by the defendant's attorney move this first filed action from Leon County, Florida where the wrong sought to be remedied occurred.

The action by the lower court judge in transferring the plaintiff's declaratory judgment action to another jurisdiction has denied the petitioner's their constitutional rights of proper and legal due process of law, guaranteed by the United States Constitution.

The wrongful act of filing a false certificate of proposed merger took place and exists in Leon County, Florida. Petitioner's action to set aside the wrongful act was brought and filed in Leon County, State of Florida, where the wrongful and illegal act took place and exists. Petitioner's filing of this action for declaratory relief was filed in the proper court in accordance with § 47.011, Florida Statutes.

As further substantial grounds, the facts that necessitate the United States Supreme Court exercise its supervisory powers is the continuing fraud and misrepresentation that Tree Farm

Development Corporation has practiced to conceal the fact that the proposed merger was not effective is.

Tree Farm Development Corporation has filed with the State of Florida, Secretary of State a false and fraudulent document representing that W. D. Nobles, Jr. was a director of Tree Farm Development Corporation. This false representation was made for the purpose of concealing the fact that all of the issued stock of Maple Leaf Development Corporation was assigned, pledged to Pensacola Loan and Savings Bank now know as the Horizon Bank of Pensacola, Mr. Nobles was at the time of the representation owner of Pensacola Loan & Savings Bank of Pensacola. Mr. Nobles had never acted in any capacity as an officer or director of Tree Farm Development Corporation.

This deliberate misrepresentation by Tree Farm Development Corporation was additionally made to cover up by trick and scheme the true status of Maple Leaf Development Corporation, which allowed Tree Farm Development Corporation to be in a position to fraudulently acquire and falsely deal in the assets of Maple Leaf Corporation. These actions are all prohibited by Florida Statutes §§ 726.01, 726.07, 726.08, 726.09 and color of law.

Citing Color of Law. The appearance or semblance, without the substance, of legal right. Misuse of power, possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state, is action taken under "color of law." Atkins v. Lanning, D.C. Okl., 415 F.Supp. 186, 188.

When used in the context of federal civil rights statutes or criminal law, the term is synonymous with the concept of "state action" under the Fourteenth Amendment, Timson v. Weiner, D.C.Ohio, 395 F.Supp. 1344, 1347; and means pretense of law and includes actions of officers who undertake to perform their official duties. Thompson v. Baker, D.C.Ark., 133 F.Supp. 247; 42 U.S. C.A. § 1983.

Action taken by private individuals may be "under color of state law" for purposes of 42 U.S.C.A. § 1983 governing deprivation of civil rights when significant state involvement attaches to action. Wagner v. Metropolitan Nashville Airport Authority, C.A.Tenn., 772 F.2d 227, 229.

Acts "under color of any law" of a State include not only acts

done by State officials within the bounds or limits of their lawful authority, but also acts done without and beyond the bounds of their lawful authority; provided that, in order for unlawful acts of an official to be done "under color of any law", the unlawful acts must be done while such official is purporting or pretending to act in the performance of his official duties; that is to say, the unlawful acts must consist in an abuse or misuse of power which is possessed by the official only because he is an official; and the unlawful acts must be of such a nature or character, and be committed under such circumstances, that they would not have occurred but for the fact that the person committing them was an official then and there exercising his official powers outside the bounds of lawful authority, 42 U.S.C.A. § 1983.

ARGUMENTATION

The Supreme Court has no common law jurisdiction and it can only exercise the jurisdiction prescribed by the constitution. Jurisdiction does exist in this case due to the state's court of last resort violation of a citizen's constitutional rights, cited in question's presented for review, by sanctioning the lower courts denying them their constitutional rights. Citing Zenger Case of 1735.

The state court of last resort has departed from the accepted and usual course of judicial proceedings, and sanctioned such a departure by the lower court. As to call for an exercise of this honorable court's supervisory powers for this instant case for a full and fair hearing by the established process for the type of problems involved.

The preposterous reasoning by respondents and their attorney reveals their reckless disregards for the constitutional rights of the people of the United States.

Therefore the questions presented in this instant case could not be more substantially federal, as it involves the basic fundamental rights of the people of the United States of America.

Wherefore we ask this Honorable Court, the Supreme Court of the United States to exercise its supervisory powers and reverse the Final Judgment and remand to the trial court for further proceedings.

MOTION FOR ORAL ARGUMENT

Pursuant to Rule 28. Oral Argument - Rules of the Supreme Court of the United States.

To emphasize and clarify the written arguments in the briefs on the merits.

Jack David Kelly, Pro Se
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(904) 438-4785
Petitioner, Pro Se

CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE

Appendix

SUPREME COURT OF FLORIDA
DATED September 6, 1995

JACK KELLY,	*	
Appellant,	*	
v.	*	CASE NO. 85,600
TREE FARM DEVELOPMENT	*	District Court of Appeal,
CORPORATION, etc.,	*	1st District - No. 94-2167
Appellee.	*	
**********	*	

Appellant's Motion for Reinstatement filed in the above cause is hereby denied.

Appellant's Motion to Strike Motion is hereby denied.

Appellee's Motion for Attorney's Fees is granted; and said attorney is hereby allowed a fee of one thousand dollars ($1,000.00) for services in this Court, said sum to be paid to said attorney by appellant after final disposition of this cause.

SHAW, KOGAN, HARDING, WELLS and ANSTEAD, JJ., concur

A True Copy

TEST:

[SEAL]

Sid J. White
Clerk, Supreme Court

TC

cc: Hon. Jon S. Wheeler, Clerk
Hon. Ernie Lee Magaha, Clerk
Hon. Joseph O. Tarbuck, Judge

Mr. Jack David Kelly
Mr. Stephen Moorhead
Mr. E. D. "Bob" Pierce
Mr. Carl R. Pennington, Jr.
Mr. Emory O. Williams
Mr. Philip A. Bates

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Florida 32399
Telephone No. (904) 488-6151
DATED May 12, 1995
CASE NO.: 94-2167

Jack Kelly — Tree Farm Development Corporation

v.

Appellant(s), — Appellee(s).

BY ORDER OF THE COURT:

The court's mandate in this case was entered on march 28, 1995. Therefore, as should have been apparent to counsel for appellant, Hall & Runnels, P.A., this court lacked jurisdiction to consider and rule upon the "Motion Requesting Court Approval of Withdrawal of Counsel", which was filed on April 21, 1995. For the same reason, as well as the additional reason that appellant, in proper person, has filed a "Notice of Appeal" to the supreme court, the "Motion Requesting: Reconsideration of, or Alternatively Clarification of, Orders Relating to Withdrawal of Counsel; Requesting that Copies of Pleading Be Provided to the Undersigned; and Requesting that Timeliness for further Action and Filing of Additional Pleadings in this Case be Tolled" is DENIED.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

/s/ Jon S. Wheeler
JON S.. WHEELER, CLERK [SEAL]

By: /s/ Sondra Joyner
Deputy Clerk

Copies:
Sherry Grant Hall, Esquire
Jack D. Kelly
Philip A. Bates, Esquire

SUPREME COURT OF FLORIDA
DATED May 3, 1995

JACK KELLY,	* *	
Appellant/Petitioner,	* *	CASE NO. 85,600
v.	* *	
TREE FARM	* *	DISTRICT COURT OF
DEVELOPMENT	* *	APPEAL,
CORPORATION, ETC.,	* *	1ST DISTRICT -
Appellee/Respondent.	* *	NO. 94-2167

It appearing to the Court that it is without jurisdiction, the Petition for Review is hereby dismissed and no motion for rehearing will be entertained by the Court.

It appearing to the Court that the District Court of Appeal, First District, did not declare invalid a State Statute or a provision of the State Constitution, and that, therefore, it is without jurisdiction, this appeal is hereby dismissed subject to reinstatement if jurisdiction is established on proper motion filed with fifteen (15) days from the date of this order. See Article V, Section 3(b)(1), Florida Constitution.

A True Copy

TEST:

[SEAL]

/s/ Sid J. White
Sid J. White
Clerk Supreme Court

H

cc. Hon. Jon S. Wheeler, Clerk
Hon. Ernie Lee Magaha, Clerk
Hon. Joseph O. Tarbuck, Judge

Mr. Jack David Kelly
Mr. Stephen Moorhead
Mr. E. D. "Bob" Pierce
Mr. Carl R. Pennington, Jr.
Mr. Emory O. Williams
Mr. Philip A. Bates

IN THE DISTRICT COURT OF APPEAL,
FIRST DISTRICT, STATE OF FLORIDA

JACK KELLY,

Appellant,

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED.

v.

CASE NO. 94-2167

TREE FARM DEVELOPMENT CORPORATION,
a foreign corporation,
Appellee.

_____/

Opinion filed March 10, 1995.

An appeal from the Circuit Court for Escambia County.
Joseph Q. Tarbuck, Judge.

Sherry Grant Hall of The Hall Law Firm, P.A., Destin, for Appellant.

Philip A. Bates of Clark, Partington, Hart, Larry, Bond, Stackhouse & Stone, Pensacola, for Appellee.

PER CURIAM.

AFFIRMED.

WEBSTER, MICKLE and BENTON, JJ., CONCUR.

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Florida 32399
Telephone No. (904) 488-6151
DATED October 13, 1994
CASE NO.: 94-02167

L. T. CASE NO. 91-0309

Jack Kelly	v.	Tree Farm Development Corporation
Appellant(s),		Appellee(s).

BY ORDER OF THE COURT:

Appellee's motion for extension of time to serve answer brief, filed on October 3, 1994, is granted. Time for service of the answer brief is extended to October 11, 1994.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

/s/ Jon S. Wheeler
JON S.. WHEELER, CLERK [SEAL]

By: /s/ Laurie Black
Deputy Clerk

Copies:

Sherry Grant Hall
Ernie Lee Magaha
Philip A. Bates

IN THE CIRCUIT COURT IN AND
FOR ESCAMBIA COUNTY, FLORIDA
DATED October 6, 1994

TREE FARM DEVELOPMENT
CORPORATION,
Plaintiff,

v.

JACK D. KELLY,
Defendant.

CASE NO. 91-0309-CA-01
Division "C"

ORDER

THIS CAUSE having come on before the Court upon the Motion of Tree Farm Development Corporation to Supplement the record in this case, and it appearing to the Court that the record has not yet been transmitted to the District Court of Appeal and that this Court therefore has jurisdiction for purposes of this matter, and it appearing further that there is no objection to the relief sought by the Appellee, Tree Farm Development Corporation, it is thereupon,

CONSIDERED, ORDERED AND ADJUDGED that the Clerk of this Court shall supplement the record by adding and including the matters and papers indicated in the Plaintiff-Appellee's Motion.

DONE AND ORDERED in Chamber at Pensacola, Escambia County, Florida, this the 6th day of October, 1994.

/s/ Joseph Q. Tarbuck
HONORABLE JOSEPH Q. TARBUCK

Conformed Copy to:

Philip A. Bates
Sherry G. Hall
Steven R. Moorhead
Carl R. Pennington
Emory O. Williams

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Florida 32399
Telephone No. (904) 488-6151
DATED September 22, 1994
CASE NO.: 94-02167

L. T. CASE NO. 91-0309

Jack Kelly	v.	Tree Farm Development Corporation
Appellant(s),		Appellee(s).

BY ORDER OF THE COURT:

Appellant's motion for extension of time to serve initial brief, filed on September 9, 1994, is granted. Time for service of the initial brief is extended to September 12, 1994.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

/s/ Jon S. Wheeler
JON S.. WHEELER, CLERK [SEAL]

By: /s/ Laurie Black
Deputy Clerk

Copies:

Sherry Grant Hall
Ernie Lee Magaha
Philip A. Bates

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA
DATED June 16, 1994

TREE FARM DEVELOPMENT CORPORATION,
Plaintiff,

v.

JACK D. KELLY,
Defendant

Case No. 93-181 and No. 91-4119 consolidated into
CASE NO. 91-0309-CA-01
Division "K"

FINAL JUDGMENT

THIS CAUSE having come on to heard before the Court upon the Motion of Tree Farm Development Corporation for Summary Final Judgment, and the Court having reviewed all of the pleadings and paper in this case, which includes Case No. 93-181 in the Circuit Court in and for Escambia County, Florida, transferred from the Circuit Court, Second Judicial Circuit in and for Leon County, Florida, and consolidated into Case No. 91-0309 in the Circuit Court in and for Escambia County, Florida; as well as Case No. 91-4119 in the Circuit Court in and for Escambia County, Florida, consolidated into this Case No. 91-0309, and the proofs submitted by the Plaintiff, the discovery and other papers in the consolidated court file, and having heard the argument of counsel and being otherwise fully advised in the premises, finds and decides that there is no genuine issue of material fact and the Plaintiff is entitled to judgment as a matter of law. It is thereupon

CONSIDERED, ORDERED AND ADJUDGED as follows:

1. The title of the Plaintiff, Tree Farm Development Corporation, to the following described real property in Escambia County, Florida:

Parcel 1:

Commencing at the Northwest corner of Section 9, Township 1 South, Range 31 West, Escambia County,

Florida; thence run South along the West line of said Section 9 for 89.95 feet to the South right of way line of State Highway No. 10 (200'R/W Nine Mile Road) and the Point of Beginning: Thence continue South and along the West line of Section 9 for 2544.21 feet; thence 90°18'33" left for 2653.89 feet; thence 89°43'42" left for 2548.40 feet to the south right of way line of State Highway No. 10; thence 90°21'15" left and along said right of way line for 2651.91 feet to the Point of Beginning, containing 155.08 acres.

Parcel 2:
Commencing at the Southwest corner of Section 9, Township 1 South, Range 31 West, Escambia County, Florida; thence run East along the South line of Section 9 for 2655.94 feet; thence 89°51'33" left for 2640.65 feet; thence 90°16'18" left for 2653.89 feet to the West line of Section 9; thence 89°41'27" left and along the West line of said Section 9 for 2634.16 feet to the Point of Beginning, containing 160.74 acres.

Parcel 3:
Commencing at the Northwest corner or Section 16, Township 1 South, Range 31 West, Escambia County, Florida; thence run South along the West line of said Section 16 for 1980.82 feet; thence 91°09'39" left for 1318.90 feet; thence 90°12'59" right for 672.70 feet; thence 90°02'54" left for 1337.33 feet; thence 89°46'43" left for 2640.31 feet to the North line of Section 16; thence 90°08'27" left and along the North line of said Section 16 for 2655.94 feet to the Point of Beginning, containing 141.31 acres.

Parcel 4-A:
Commencing at the Southeast corner of Section 8, Township 1 South, Range 31 West, Escambia County, Florida; thence run West along the South line of Section 8 for 1992.16 feet; thence 90°27'09" right for 2639.37 feet;

thence 89°41'50" right for 1941.42 feet to the East line of Section 8, thence 90°17'24" right and along the East line of said Section 8 for 2634.16 feet to the Point of Beginning, containing 120.57 acres.

Parcel 4-B:
Commencing at the Southeast corner of Section 8, Township 1 South, Range 31 West, Escambia County, Florida; thence run West along the South line of said Section 8 for 1992.16 feet to the Point of Beginning: Thence continue West along same line for 1992.16 feet; thence 90°27'55" right for 2644.59 feet; thence 89°41'04" right for 1991.42 feet; thence 90°18'10" right for 2639.37 feet to the Point of Beginning, containing 120.81 acres.

Parcel 5:
Commencing at the Northeast corner of Section 9, Township 1 South, Range 31 West, Escambia County, Florida; thence run South along the East line of said Section 9 for 94.46 feet to the South right of way line of State Highway No. 10 (200 N/W - Nine Mile Road) and the Point of Beginning: Thence continue South and along the East line of said Section 9 for 2552.68 feet; thence 89°45'56" right for 2653.88 feet; thence 90°16'18" right for 2548.40 feet to the South right of way line of State Highway No. 10; then 89°38'45" right and along said right of way line for 2651.90 feet to the Point of Beginning, containing 155.31 acres.

Parcel 6:
All of Rosemont Subdivision, a subdivision of a portion of Section 9, Township 1 South, Range 31 West, Escambia County, Florida according to plat recorded in Plat Book 1 at Page 4 of the public records of said County.
ALSO
All of First Addition to Rosemont Subdivision, a subdivision of a portion of Section 9, Township 1 South, Range 31 West, Escambia County, Florida, according to

plat recorded in Plat Book 1 at Page 9 of the public records of said County.

Parcel 7:
Commencing at the Northeast corner of Section 16, Township 1 South, Range 31 West, Escambia County, Florida; thence run South along the East line of said Section 16 for 2643.09 feet; thence 90°00'59" right for 2667.38 feet; thence 90°13'17" right for 2640.31 feet; thence 89°51'33" right for 2655.93 feet to the Point of Beginning, containing 161.42 acres.

Parcel 8:
Commencing at the Northeast corner of Section 16, Township 1 South, Range 31 West, Escambia County, Florida; thence run South along the East line of said Section 16 for 2643.09 feet; thence 90°00'59" right for 1333.69 feet to the Point of Beginning; thence 89°57'06" left for 1312.16 feet; thence 1°26'06" right for 351.44 feet to the Northerly right of way line of U. S. Highway No. 90 (200R/W Mobile Highway); thence 62°07'00" left and along said right of way for 524.35 feet; thence 119°01'00" left for 605.29 feet; thence 90°09'00" right for 870.75 feet; thence 89°46'53" right for 1335.40 feet; thence 89°54'34" left for 660.43 feet to the Point of Beginning, containing 65.18 acres.

is a good title as against the claims or purported claims of the Defendant, Jack D. Kelly, and all other parties claiming by, through, under, or against him; and all other parties having or claiming to have any right, title, or interest in that property; and of all persons claiming by, through, or under Defendant since the filing of the Notice of Lis Pendens; and those claims or purported claims are canceled; and title to the property is forever quieted in the Plaintiff, Tree Farm Development Corporation.

2. All of the claims, counterclaims, and defenses of the Defendant, Jack D. Kelly, in each of the several consolidated cases, shall be and the same are hereby dismissed with prejudice.

3. This Court reserves jurisdiction for purposes of awarding costs and such attorneys' fees as may be appropriate.

DONE and ORDERED in Chambers at Pensacola, Escambia County, Florida, this 16th day of June, 1994.

\s\ Joseph Q. Tarbuck
JOSEPH Q. TARBUCK
CIRCUIT COURT JUDGE

Conformed Copies to:

Philip A. Bates
P. O. Box 13010
Pensacola, FL 32501

John Kevin Griffin
P. O. Box 1030
Pensacola, FL 32595-1030

Emory O. Williams
Florida Department of
Transportation
605 Suwannee Street
Tallahassee, FL 32399-0458

Stephen Moorhead
4300 Bayou Blvd.
Suite 12-13
Pensacola, FL 32503

Carl R. Pennington
3375 Capitol Circle
P. O. Box 13527
Tallahassee, FL 32317

E. D. "Bob" Pierce
1401 North "B" Street
Pensacola, FL

Plaintiff's address:

Tree Farm Dev. Corp.
23 Lexington Avenue
Cambridge, MA 02138

Defendant's address:

Jack D. Kelly
3331 Summit Blvd.
Apt. 87
Pensacola, FL 32503

IN THE CIRCUIT COURT IN AND
FOR ESCAMBIA COUNTY, FLORIDA
DATED June 3, 1994

TREE FARM DEVELOPMENT
CORPORATION, a foreign
corporation,
Plaintiff,

vs. CASE NO. 91-0309

JACK D. KELLY,
Defendant.

_____/

**ORDER ON PLAINTIFF'S MOTION
FOR SUMMARY FINAL JUDGMENT**

Maple Leaf Development Corporation, hereinafter referred to as "Maple Leaf" was incorporated as a Florida corporation in April of 1970. On July 1, 1971, Maple Leaf acquired title to approximately 1080.42 acres as well as Rosemont Subdivision and the First Addition thereto.

On or about December 3, 1971, Maple Leaf entered into an agreement entitled "Agreement and Plan of Reorganization" with Tree Farm Development Corporation, a Delaware corporation, hereinafter referred to as "Tree Farm" and five individuals, Jack D. Kelly, Abraham I. Pierce, Emory O. Williams, Jr., George G. Phillips, Jr., and E. D. Bob Pierce. The agreement basically provides for the merger of Maple Leaf into Tree Farm. About January 18, 1972, Tree Farm and Maple leaf entered into an Agreement of Merger. Item Four of the Agreement of Merger provides as follows:

> This Agreement and Plan of Merger shall be filed with the Secretary of State of Delaware and with the Department of State of Florida and the merger provided for herein shall become effective on the date on which the last act required to complete said merger under the respective laws of Delaware and Florida is performed.

The Agreement of Merger was signed by the president of each

entity, Kelly signing as President of Maple Leaf, and each was attested to by each secretary. The Agreement of Merger was filed with the office of the Secretary of State of the State of Florida on February 1, 1972, and the same was also filed in the offices of the Department of State of the State of Delaware on February 2, 1972, and a Certificate as to the merger was filed in the public records of Escambia County, Florida, on February 11, 1972, and said Agreement was also filed with the Recorder of Deeds in Delaware on February 2, 1972.

In connection with the Agreement of Merger, each of the Maple Leaf shareholders, including Jack D. Kelly, executed, sealed and delivered a General Release dated January 28, 1972.

On or about November 14, 1977, the Barnett Bank of Pensacola, formerly the First Bank & Trust Company of Pensacola, executed and delivered a Special Warranty Deed to Tree Farm as to the property therein described which purports to be the Rosemont Subdivision and the First Addition thereto. Defendant, Jack D. Kelly, has filed numerous documents in the public records of Escambia County, Florida, wherein he claims to be the owner of some or all of the acreage and subdivision property. Tree Farm filed this suit on January 22, 1991, seeking to quiet title to all of the acreage and subdivision property owned by Tree Farm.

Prior to the quiet title suit being filed, Kelly filed suit in Leon County, Florida in September of 1990, where in the relief sought was vacation of the merger. An order was entered in Leon County transferring the case to Escambia County, which order was appealed by Kelly to the First District Court of Appeal, the Florida Supreme Court, and the United States Supreme Court, each court ruling against Kelly. In 1990, Kelly also filed suit against Tree Farm in the form of a "Petition to Implement Protective Measures". An order was entered in September 30, 1992, consolidating said action with this quiet title action, which order was also appealed by Kelly to the First District Court of Appeal and the Florida Supreme Court, resulting in decisions adverse to Kelly. On September 29, 1993, an order was entered consolidating the two suits instituted by Kelly with the quiet title suit instituted by Tree Farm, which order Kelly also appealed to the First district Court of Appeal which dismissed the same and the Florida Supreme Court denied Kelly's

petition for review. The issues presented in all three cases are identical in nature and the decision made herein shall be dispositive of all such issues.

Kelly, individually, and as President of Maple Leaf, along with the other stockholders of Maple Leaf signed the Agreement and Plan of Reorganization and Kelly, as president of Maple Leaf, along withe the secretary, Emory O. Williams, Jr., also signed the Agreement of Merger. Further, Defendant released any claim he had to his shares or any other interest he may have in and to Maple Leaf to Tree Farm.

According to the corporation laws of both Delaware and Florida, the merger became effective on February 2, 1972, and Maple Leaf ceased to exist and Tree Farm was the owner of all property previously owned by Maple Leaf. The numerous documents or claims filed by Kelly in the public records of Escambia County might be construed to be clouds on the title of the real property now owned by Tree Farm and therefore Tree Farm is entitled to bring this quiet title action.

There is no contention that Kelly claims adverse possession inasmuch as he is not in possession of the property nor has he ever been in possession of the property nor has Kelly paid the ad valorem taxes on said property since said property was acquired by Tree Farm in February of 1972. The notice of Lis Pendens dated May 7, 1979, and the numerous affidavits or documents do not cite any legal or factual basis upon which Kelly can properly assert any claim of title to the property in question and, furthermore, all of the foresaid have now become moot and unenforceable as a matter of law inasmuch as Kelly did not institute any action within one year of filing of each of the aforesaid documents.

Further, Kelly should not now be permitted to institute a claim that the merger was never completed inasmuch as he has received the fruits thereof. Further, Kelly should be barred by the equitable doctrines of estoppel and laches since he waited over eighteen and one-half years before instituting suit to vacate or have declared illegal the merger. Further, pursuant to F.S. 95.11(3)(p) any suit with regard to matters surrounding the merger should have been brought within five years of discovery by Kelly of facts giving rise to a defective merger. In this regard, Kelly himself has documented

his knowledge of the existence of such a prospective claim inasmuch as it is clear that as of January 17, 1979, Kelly was advised by the Honorable Curtis Golden, State Attorney, First Judicial Circuit of Florida, that a grand jury has considered his various allegations and had determined that there was no basis for any kind of criminal action arising out the merger. In said correspondence from Mr. Golden, Kelly was further advised that his grievances, if any, were civil and not criminal in nature.

It appears further that Kelly has made claim that a fraud was practiced upon him by the other shareholders of Maple Leaf, particularly Emory O. Williams, Jr. and George G. Phillips, Jr. F.S. 95.11 provides that a legal or equitable action founded on fraud shall be commenced within four years. Because of some changes in 1975 with respect to the statute of limitations in existence in 1972, it appears that actions grounded upon fraud must be, in any event, instituted within twelve years after the date of the commission of alleged fraud, regardless of the date of fraud was or should have been discovered. Initially, it should be noted that Kelly has not plead claims of misrepresentation and fraud with the particularity required by Florida law. However, even if properly plead, any action on fraud is barred if filed later than February 3, 1984. As indicated, Kelly's action was first commenced in 1990.

In summary, Kelly's claim is barred because he was not seized or possessed of the property within seven years prior to the commencement of his action. Any liens or claims filed by Kelly prior to the filing of his first suit in 1990 have been time-barred. The doctrines of laches and estoppel are a bar to Kelly's claim inasmuch as he did not act promptly in judicially asserting the invalidity of the merger. Also, an examination of all of the agreements entered into between Maple Leaf and Tree Farm clearly indicate that Kelly was in agreement therewith, signed all of the necessary documents, and realized the fruits of the merger. An examination of Kelly's counterclaim and affirmative defense will readily show that the claims made therein are insufficient as a matter of law. It is therefore

DONE AND ORDERED that motion of Plaintiff, TREE FARM DEVELOPMENT CORPORATION, for summary judgment, be, and the same is hereby granted. That Kelly's

counterclaim and affirmative defenses be, and the same are hereby dismissed. That counsel for Plaintiff shall prepare an appropriate summary final judgment quieting title in Plaintiff in and to the property described in the complaint filed herein.

DONE AND ORDERED at Pensacola, Escambia County, Florida, this the 3rd day of June, 1994.

/s/ Joseph Q. Tarbuck
JOSEPH Q. TARBUCK, CIRCUIT JUDGE

Conformed Copy to:

Philip A. Bates, Esq.
John Kevin Griffin, Esq.

SUPREME COURT OF FLORIDA
DATED May 5, 1994

JACK KELLY,ETC.	*	
Appellant,	*	CASE NO. 83,371
v.	*	
TREE FARM	*	DISTRICT COURT OF
DEVELOPMENT	*	APPEAL,
CORPORATION, ET AL.,	*	1ST DISTRICT - NO. 93-3607
Appellees.	*	
	*	

* * * * * * * * * * * * * * *

Appellant's Motion for Reinstatement filed in the above cause is hereby denied.

GRIMES, C.J., OVERTON, McDONALD, SHAW and HARDING, JJ., concur

A True Copy

TEST:

[SEAL]

/s/ Sid J. White
Sid J. White
Clerk Supreme Court

TC

cc. Hon. Jon S. Wheeler, Clerk
Hon. Ernie Lee Magaha, Clerk
w/copy to Circuit Judge
Mr. Jack David Kelly
Mr. Philip A. Bates
Mr. Stephen R. Moorhead
Mr. Carl R. Pennington
Mr. Emory O. Williams

SUPREME COURT OF FLORIDA
DATED March 18, 1994

JACK KELLY, ETC.	* *	
Appellant/Petitioner,	* *	CASE NO. 83,371
v.	* *	
TREE FARM	* *	DISTRICT COURT OF
DEVELOPMENT	* *	APPEAL,
CORPORATION, ET AL.,	* *	1ST DISTRICT -
Appellees/Respondents.	* *	NO. 93-3607

It appearing to the Court that the notice was not timely filed and further that it is without jurisdiction under Article V of the Florida Constitution, the Petition for Review is hereby dismissed and no motion for rehearing will be entertained by the Court.

It appearing to the Court that the District Court of Appeal, First District, did not declare invalid a State Statute or a provision of the State Constitution, and that, therefore, it is without jurisdiction, this appeal is hereby dismissed subject to reinstatement if timeliness and jurisdiction are established on proper motion filed within fifteen (15) days from the date of this order. See Article V, Section 3(b)(1), Florida Constitution.

A True Copy

TEST:

[SEAL]

/s/ Sid J. White
Sid J. White
Clerk Supreme Court

H

cc. Hon. Jon S. Wheeler, Clerk
Hon. Ernie Lee Magaha, Clerk
w/copy to Circuit Judge
Mr. Jack David Kelly
Mr. Philip A. Bates
Mr. Stephen R. Moorhead
Mr. Carl R. Pennington
Mr. Emory O. Williams

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE February 9, 1994
CASE NO. 93-3607

LT 91-0309-CA-01

JACK D. KELLY, etc. et al. appellant/petitioner	vs.	TREE FARM DEVELOPMENT CORP., et al. appellees/respondent

BY ORDER OF THE COURT:

Appellee's motion filed December 6, 1993, is granted and this appeal is dismissed for lack of jurisdiction. Appellee's motion, insofar as it seeks other sanctions, is denied.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

/s/ Jon S. Wheeler
JON S. WHEELER, CLERK

By: /s/Laurie Black [SEAL]
Deputy Clerk

Copies:
Jack D. Kelly
Stephen R. Moorehead
George G. Phillips, Jr.
Philip A. Bates
Ronald W. Miller
Ernie Lee Magaha

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE January 10, 1994
CASE NO. 93-3607

JACK D. KELLY, etc. et al. appellant/petitioner	vs.	TREE FARM DEVELOPMENT CORP., et al. appellees/respondent

BY ORDER OF THE COURT:

This court is in receipt of a motion for extension of time which although styled in the circuit court, is clearly directed to this court. The motion is granted and time to respond to the motion to dismiss is extended to 15 days from date of this order.

I HEREBY CERTIFY that is (a true copy of) the original court order.

/s/ Jon S. Wheeler
JON S. WHEELER, CLERK

By: /s/Laurie Black [SEAL]
Deputy Clerk

Copies:
Jack D. Kelly
Stephen R. Moorehead
George G. Phillips, Jr.
Philip A. Bates
Ronald W. Miller

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE December 16, 1993
CASE NO. 93-03607

L.T. CASE NO. 91-0309-CA-01

JACK D. KELLY, etc. et al.
appellant(s),

vs.

TREE FARM DEVELOPMENT CORP., et al.
appellee(s).

BY ORDER OF THE COURT:

The appellant shall show cause within 10 days from the date of this order why this appeal should not be dismissed for failure of appellant to comply with this court's order dated November 16, 1993, requiring a copy of the order being appealed.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

/s/ Jon S. Wheeler
JON S. WHEELER, CLERK

By: /s/Laurie Black
Deputy Clerk

[SEAL]

Copies:
Jack D. Kelly
Stephen R. Moorehead
George G. Phillips, Jr.
Philip A. Bates
Ronald W. Miller

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE December 9, 1993
CASE NO. 93-03607

L.T. CASE NO. 91-0309-CA-01

JACK D. KELLY, etc. et al. appellant(s),	vs.	TREE FARM DEVELOPMENT CORP., et al. appellee(s).

BY ORDER OF THE COURT:

Appellant to show cause within 10 days from this date why the motion served on December 1, 1993 should not be granted.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

/s/ Jon S. Wheeler
JON S. WHEELER, CLERK

By: /s/Laurie Black [SEAL]
Deputy Clerk

Copies:
Jack D. Kelly
Stephen R. Moorehead
George G. Phillips, Jr.
Philip A. Bates
Ronald W. Miller

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE November 16, 1993
CASE NO. 93-03607

L.T. CASE NO. 91-0309-CA-01

JACK D. KELLY, etc. et al.
appellant(s),

vs.

TREE FARM DEVELOPMENT CORP., et al.
appellee(s).

BY ORDER OF THE COURT:

Upon the Court's own motion, appellant is directed to file within 10 days from the date of this order an amended notice of appeal which states the date of rendition of the order to be reviewed. A copy of Florida Rule of Appellate 9.020(g) which defines "rendition" is attached hereto. Also attached for guidance is a sample form of an amended notice of appeal. The amended notice of appeal shall be filed with this court and not the lower tribunal. The failure of appellant to timely comply with this order could result in the imposition of sanctions, including dismissal of the appeal. Florida Rule of Appellate Procedure 9.410.

/s/ Jon S. Wheeler
JON S. WHEELER, CLERK

By: /s/Vickie Maloy
Deputy Clerk

[SEAL]

Copies:
Jack D. Kelly
Stephen R. Moorehead
George G. Phillips, Jr.
Philip A. Bates
Carl R. Pennington, Jr.
Ronald W. Miller

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE November 16, 1993
CASE NO. 93-03607

L.T. CASE NO. 91-0309-CA-01

JACK D. KELLY, etc. et al. appellant(s),	vs.	TREE FARM DEVELOPMENT CORP., et al. appellee(s).

BY ORDER OF THE COURT:

Upon the Court's own motion, pursuant to Florida Rules of Appellate Procedure 9.110(d), and/or 9.130(c), appellant is directed to file within 10 days from the date of this order conformed copies of the order(s) of the lower tribunal from which the appeal is being taken, together with any order entered on a timely motion postponing rendition of the order(s) appealed. The conformed copies shall be filed by the appellant with a notice of filing which contains a certificate of service reflecting service on all counsel or parties in the case. Florida Rule of Appellate Procedure 9.420(c).

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

/s/ Jon S. Wheeler
JON S. WHEELER, CLERK

By: /s/Vickie Maloy [SEAL]
Deputy Clerk

Copies:
Jack D. Kelly
Stephen R. Moorehead
George G. Phillips, Jr.
Ernie Lee Magaha
Philip A. Bates
Carl R. Pennington, Jr.
Ronald W. Miller

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA
DATED September 29, 1993

TREE FARM DEVELOPMENT CORPORATION,
Plaintiff,

v.

CASE NO. 91-0309-CA-01
Division "K"

JACK D. KELLY,
Defendant

ORDER ON PLAINTIFF'S MOTION TO CONSOLIDATE AND MOTION TO COMPEL DISCOVERY AND ON DEFENDANT'S MOTION FOR PROTECTIVE ORDER

THIS CAUSE came on before the Court for hearing upon the Motion of the Plaintiff, Tree Farm Development Corporation, (hereinafter "Tree Farm") to consolidate this action with the case styled Jack D. Kelly v. Tree Farm Development Corporation, the same being Case No. 93-181 currently pending in Escambia County, Florida (formerly Leon County Circuit Court Case No. 90-3398), and the Motion of the Plaintiff to Compel Discovery, as well as the Motion of the Defendant, Jack D. Kelly, for Protective Order. The Court having heard the argument of counsel, and being fully advised in the premises, finds and decides as follows:

1. This case and the Case No. 93-181 described above involve common questions of law and fact. The Court finds, pursuant to Rule 1.270(a), Fla. R. Civ. P., that these cases should be consolidated and, accordingly, the Plaintiff's Motion to Consolidate Cases is hereby granted. This case and Case No. 93-181 shall be consolidated into Case No. 91-0309-CA-01 for all purposes.

2. Tree Farm's Motion to Compel Discovery is granted. The Defendant, Jack D. Kelly, shall make himself available and appear for his deposition within ten (10) days of the date hereof.

3. The Defendant's Motion for Protective Order is denied.

DONE and ORDERED in Chambers at Pensacola, Escambia County, Florida, this the 29th day of September, 1993.

\s\ John T. Parnham
JOHN T. PARNHAM
CIRCUIT JUDGE

Conformed Copies to:

Philip A. Bates
Ronald W. Miller

SUPREME COURT OF FLORIDA
DATED September 27, 1993

JACK DAVID KELLY Petitioner,	*	
v.	*	Case No. 81,775
TREE FARM DEVELOPMENT CORP. Respondent.	*	District Court of Appeal 1st District - No. 92-4361

Appellant's Motion for Reinstatement filed in the above cause is hereby denied.

OVERTON, SHAW, GRIMES, KOGAN and HARDING, JJ., concur

A TRUE COPY

TEST:

/s/ Sid J. White
Sid J. White
Clerk Supreme Court

[SEAL]

TC

cc: Hon. Jon S. Wheeler, Clerk
Hon. Ernie Lee Magaha, Clerk
(w/copy to Circuit Judge)

Mr. Ronald W. Miller
Mr. Philip Bates

SUPREME COURT OF FLORIDA
DATED July 7, 1993

JACK DAVID KELLY
Petitioner,

vs. Case No. 81,775

TREE FARM DEVELOPMENT CORP.
Respondent.

* *

Appellant's Motion for Enlargement Of Time To File Reinstatement is granted. Appellant shall file a Motion For Reinstatement on or before July 27, 1993.

Motion For Extension Of Time to File Initial Brief On Appeal is denied.

A TRUE COPY

TEST:

/s/ Sid J. White
Sid J. White
Clerk Supreme Court

[SEAL]

bdm
c: Mr. Ronald W. Miller
Mr. Philip Bates

SUPREME COURT OF FLORIDA
DATED June 1, 1993

JACK KELLY,	* *	
Appellant,	* *	
v.	* *	CASE NO. 81,775
TREE FARM DEVELOPMENT	* *	District Court of Appeal,
CORPORATION,	* *	1st District - No. 92-4361
Appellee.	* *	

It appearing to the Court that the District Court of Appeal, First District, did not declare invalid a State Statute or a provision of the State Constitution, and that, therefore, it is without jurisdiction, this appeal is hereby dismissed subject to reinstatement if jurisdiction is established on proper motion filed within fifteen (15) days from the date of this order. See Article V, Section 3 (b)(1), Florida Constitution.

TC

A True Copy

TEST:

[SEAL]

Sid J. White
Clerk, Supreme Court

cc: Hon. Jon S. Wheeler, Clerk
Hon.Ernie Lee Magaha, Clerk
w/copy to Circuit Judge

Mr. Ronald W. Miller
Mr. Philip A. Bates

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE April 20, 1993
CASE NO. 92-04361

L.T. CASE NO. 91-4119-CA-01

JACK D. KELLY	vs.	TREE FARM DEVELOPMENT CORP.
appellant/petitioner,		appellee/respondent.

BY ORDER OF THE COURT:

Appellee's motion filed February 18, 1993, is granted and this appeal is dismissed for lack of jurisdiction.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

/s/ Jon S. Wheeler
JON S. WHEELER, CLERK

By: /s/Laurie Black [SEAL]
Deputy Clerk

Copies:
Jack D. Kelly
Philip A. Bates
Ronald W. Miller
Ernie Lee Magaha

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE March 23, 1993
CASE NO. 92-04361
L.T. CASE NO. 91-4119-CA-01

JACK D. KELLY	vs.	TREE FARM DEVELOPMENT CORP.
appellant,		appellee(s).

BY ORDER OF THE COURT:

Appellant's request for enlargement of time to submit show cause brief on appellant's motion to strike or dismiss appeal filed March 4, 1993, is granted. Time is extended to March 29, 1993 for appellant to respond to show cause order of February 19, 1993, appellee's motion to dismiss.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

/s/ Jon S. Wheeler
JON S. WHEELER, CLERK

By: /s/Laurie Black [SEAL]
Deputy Clerk

Copies:
Jack D. Kelly
Ernie Lee Magaha
Philip A. Bates

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA
DATED February 22, 1993

TREE FARM DEVELOPMENT CORPORATION,
Plaintiff,

v.

CASE NO. 91-0309-CA-01
Division "K"

JACK D. KELLY,
Defendant.
_____/

ORDER TO QUASH DEPOSITION

THIS CAUSE having come before the Court on defendant's MOTION FOR TO QUASH TAKING OF DEPOSITION, and DEFENDANT'S MOTION TO QUASH ORDER ON MOTION OF PLAINTIFF TO COMPEL DISCOVERY, and the Court being advised in the premises, it is

ADJUDGED that the deposition scheduled in this case to be taken on February 23, 1993 is quashed.

IT IS FURTHER ADJUDGED that the Defendant be given an additional 30 days from the date of this order to obtain counsel.

In the event that the Defendant shall chose to represent himself after that date, he shall be granted the same courtesies as would opposing counsel licensed to practice law in this state.

FURTHER, the order signed by this Court on February 9, 1993, is stayed at this time to allow for the obtaining of counsel or the decision of the Defendant to represent himself.

ORDERED this 22nd day of February, 1993.

/s/ John T. Parnham
CIRCUIT JUDGE

Copies to:
Jack D. Kelly
Philip A. Bates

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE February 19, 1993
CASE NO. 92-04361

LT 91-4119-CA-01

JACK D. KELLY vs. TREE FARM DEVELOPMENT CORP.

appellant(s), appellee(s).

BY ORDER OF THE COURT:

Appellant to show cause within 10 days from this date why the motion served on February 17, 1993 should not be granted.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

/s/ Jon S. Wheeler
JON S. WHEELER, CLERK

By: /s/Vickie Maloy [SEAL]
Deputy Clerk

Copies:
Jack D. Kelly
Philip A. Bates

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA
DATED February 9, 1993

TREE FARM DEVELOPMENT CORPORATION,
Plaintiff,

v.

CASE NO. 91-0309-CA-01
Division "K"

JACK D. KELLY,
Defendant.
_____/

ORDER ON MOTION OF PLAINTIFF TO COMPEL DISCOVERY

This cause came on before the Court on the Motion of Plaintiff, Tree Farm Development Corporation, to Compel Discovery. The Court has reviewed the Motion filed by the Plaintiff, has reviewed the Court file and has heard the argument of counsel. It is thereupon

CONSIDERED, ORDERED AND ADJUDGED that the Defendant, Jack D. Kelly, shall make himself available for deposition of Plaintiff within two weeks following the entry of this Order. The specific date, time, and place for the taking of the deposition shall be noticed by Plaintiff, and according to the applicable Rules of Civil Procedure.

DONE AND ORDERED in Chambers, at Pensacola, Escambia County, Florida, this 9th day of February, 1993.

/s/ John T. Parnham
CIRCUIT JUDGE

Conformed Copies to:
Philip A. Bates
Burton E. Strubhar
CR1266.PAB

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA
DATED February 5, 1993

JACK DAVID KELLY,
Plaintiff,

v.

CASE NO. 91-4119-CA-01
Division "A"

TREE FARM DEVELOPMENT CORPORATION,
Defendant.
_____/

ORDER FOR WITHDRAWAL OF COUNSEL

This cause came to be heard on the Motion to Withdraw filed by Burton E. Strubhar as attorney of record for JACK DAVID KELLY, Plaintiff to withdraw in the action. The Court being duly informed and having heard the evidence and argument by counsel, it is hereby,

ORDERED AND ADJUDGED, as follows: Burton E. Strubhar is hereby allowed to withdraw as attorney to record for JACK DAVID KELLY, and JACK DAVID KELLY shall have 30 days from the date of this Order in which to obtain other counsel.

DONE AND ORDERED in Chambers, at Pensacola, Escambia County, Florida, this 5th day of February, 1993.

/s/ Michael Jones
CIRCUIT JUDGE

Conformed Copies to:
Burton E. Strubhar, Esq.
Attorney for Plaintiff

Philip A. Bates, Esq.
Attorney for Defendant

c:\wp51\work\Kelly\withdraw.not

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE January 21, 1993
CASE NO. 92-4361

JACK D. KELLY	vs.	TREE FARM DEVELOPMENT CORP.
appellant/petitioner		appellees/respondent

BY ORDER OF THE COURT:

Upon consideration of appellant's response, it appears that the notice of appeal was timely filed and this court's order of January 7, 1993, is discharged.

Appellant is directed to serve a copy of his response dated January 11, 1993, on opposing counsel and to file a certificate of service which so demonstrates. Appellant is admonished that copies of all pleadings and briefs filed with this court must be served on opposing counsel and contain a certificate of service.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

/s/ Jon S. Wheeler
JON S. WHEELER, CLERK

By: /s/Laurie Black [SEAL]
Deputy Clerk

Copies:
Jack D. Kelly
Philip A. Bates

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE January 7, 1993
CASE NO. 92-4361

JACK D. KELLY, etc. et al. appellant/petitioner	vs.	TREE FARM DEVELOPMENT CORP., et al. appellees/respondent

BY ORDER OF THE COURT:

Upon the court's own motion the appellant is ordered to show cause within 10 days from the date of this order why the appeal should not be dismissed for failure to timely file the notice of appeal. If any pleading or order is reference in support of the response, a copy of the referenced order or pleading shall be attached to the response.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

/s/ Jon S. Wheeler
JON S. WHEELER, CLERK

By: /s/Laurie Black [SEAL]
Deputy Clerk

Copies:
Jack D. Kelly
Philip A. Bates

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543
DATED December 7, 1992

Mr. Jack David Kelly
3331 Summit Blvd.
Apt. 87
Pensacola, FL 32503

RE: Jack David Kelly, etc.
v. Tree Farm Development Corporation, et al.
No. 92-327

Dear Mr. Kelly:

The Court today entered the following order in the above entitled case:

The petition for rehearing is denied.

Very truly yours,

/s/ William K. Suter
William K. Suter, Clerk

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA
DATED November 23, 1992

JACK DAVID KELLY,
Plaintiff,

v.

CASE NO. 91-4119-CA-01
Division "A"

TREE FARM DEVELOPMENT CORPORATION,
Defendant.
_____/

ORDER ON DEFENDANT'S MOTION FOR REHEARING

This cause, having come on before the Court for hearing on the Defendant's Motion for Rehearing, and it appearing to the Court that the Defendant's Motion should be denied, it is thereupon

CONSIDERED, ORDERED AND ADJUDGED that the Defendant's Motion for Rehearing should be and the same is hereby denied.

DONE AND ORDERED in Chambers, at Pensacola, Escambia County, Florida, this 23rd day of November, 1992.

/s/ Michael Jones
CIRCUIT JUDGE

Conformed Copies to:
Philip A. Bates
Burton E. Strubhar

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543
DATED October 13, 1992

Mr. Burton E. Strubhar
3289 Summit Boulevard
Suite 31B
Pensacola, FL 32503

RE: Jack David Kelly, etc.
v. Tree Farm Development Corporation, et al.
No. 92-327

Dear Mr. Strubhar:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Very truly yours,

/s/ William K. Suter
William K. Suter, Clerk

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA
DATED September 30, 1992

JACK DAVID KELLY,
Plaintiff,

v.

CASE NO. 91-4119-CA-01
Division "A"

TREE FARM DEVELOPMENT CORPORATION,
Defendant.
_____/

ORDER ON DEFENDANT'S MOTION TO DISMISS

This cause, having come on before the Court for hearing on the Defendant's Motion to Dismiss the Plaintiff's Amended Complaint, and it appearing to the Court that the relief sought by the Plaintiff would be available, if at all, only as ancillary relief in certain actions or proceedings with respect to real property, and it appearing further that the issue of ownership of the real property which is the subject of the Plaintiff's Amended Complaint is already pending in Case No. 91-0309-CA-01, Division "K," in this Circuit, it is thereupon

CONSIDERED, ORDERED AND ADJUDGED that this case shall be and the same is hereby transferred to, and consolidated with, Case No. 91-0309-CA-01, Division "K."

DONE AND ORDERED in Chambers, at Pensacola, Escambia County, Florida, this 30th day of September, 1992.

/s/ Michael Jones
CIRCUIT JUDGE

Conformed Copies to:
Philip A. Bates
Burton E. Strubhar
CR1019.PAB

SUPREME COURT OF THE UNITED STATES
DATED July 13, 1992

No. A-933

Jack David Kelly,
Petitioner

v.

Tree Farm Development, et al.

ORDER

UPON CONSIDERATION of the application of petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended further to and including July 24, 1992.

/s/ Anthony M. Kennedy
Associate Justice of the Supreme
Court of the United States

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

DATED April 7, 1992

JACK DAVID KELLY,
Plaintiff,

v.

CASE NO. 91-4119-CA-01
Division "A"

TREE FARM DEVELOPMENT CORPORATION,
Defendant.
_____/

ORDER ON DEFENDANT'S MOTION FOR DISMISS

THIS CAUSE came on before the Court for hearing on March 12, 1992, upon the Motion of the Defendant, Tree Farm Development Corporation, to Dismiss the Plaintiff's Complaint pursuant to Rule 1.14(b) Fla. R. Civ. P. The Court has considered the grounds raised by the Defendant and the argument of counsel for Plaintiff and Defendant. The Court being fully advised in the premises finds and decides as follows:

1. The Plaintiff alleges that the Defendant is in possession of certain real property situate in Escambia County, Florida, which property is more particularly described in the Plaintiff's Complaint and will be referred to hereafter as the "Subject Property." The Plaintiff further alleges that a certain merger of two corporations by virtue of which Defendant claims title to the Subject Property, was not properly concluded and the Plaintiff has brought suit to set aside said merger. That action was filed in the Circuit Court of Leon County, Florida, the same being Case No. 90-3398 (hereinafter the "Leon County Action").

2. The Defendant has brought suit in Escambia County, Florida seeking to quiet its title to the Subject Property. that action is pending in the Circuit court of Escambia County, Florida, the same being Case No. 91-0309-CA-01, Division "K" (hereinafter

the "Escambia County Action").

3. By Order of the Circuit Judge in Leon County, Florida, the Leon County Action is to be transferred to Escambia County, Florida. That ruling has been affirmed by the District Court of Appeal. The Plaintiff's appeal from the District Court of Appeal per curiam affirmance of the Leon County Circuit Judge's Order directing the transfer of the Leon County Action to Escambia County, Florida, has been dismissed by the Florida Supreme Court.

4. The Plaintiff alleges that during the pendency of the two legal actions described hereinabove, the Subject Property is deteriorating because, according to Plaintiff, the Defendant is not doing certain things with respect to the Subject Property which Plaintiff contends should be accomplished to preserve and protect the Subject Property.

5. The Plaintiff, therefore, seeks relief in the nature of affirmative injunctive relief to enable the Plaintiff to go upon the Subject Property and do or cause to be done those things Plaintiff contends are necessary to preserve and protect the Subject Property.

6. The Plaintiff's Complaint does not state a claim for relief in the manner and as required by Rule 1.110(b) Fla. R. Civ. P. It is thereupon

CONSIDERED, ORDERED AND ADJUDGED that the Defendant's Motion to Dismiss shall be and the same is hereby granted.

Plaintiff shall have 20 days from the date hereof within which to file and serve his amended complaint if the Plaintiff be so advised. It is further

ORDERED AND ADJUDGED that if any amended complaint filed herein by the Plaintiff shall seek the same relief as was apparently Plaintiff's intention under Plaintiff's original Complaint as explained to the Court by Plaintiff's counsel at the hearing on Defendant's Motion to Dismiss, this Court will favorably consider a Motion by the Defendant for consolidation of this case with the earliest numbered Escambia County Circuit Court case currently pending wherein title to the subject property is at issue as between the Plaintiff and this Defendant.

DONE AND ORDERED in Chambers, at Pensacola,

Escambia County, Florida, this 7th day of April, 1992.

/s/ Michael Jones
CIRCUIT JUDGE

Conformed Copies to:
Philip A. Bates
Burton E. Strubhar
CR733.PAB

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA
DATED March 16, 1992

TREE FARM DEVELOPMENT CORPORATION,
Plaintiff,

v.

CASE NO. 91-0309-CA-01
Division "K"

JACK D. KELLY,
Defendant.
_____/

ORDER ON MOTION OF PLAINTIFF TO COMPEL DISCOVERY

This cause came on before the Court on the Motion of Plaintiff, Tree Farm Development Corporation, to Compel Discovery. The Court has reviewed the Motion filed by the Plaintiff, has reviewed the Court file and has heard the argument of counsel. It is thereupon

CONSIDERED, ORDERED AND ADJUDGED that the Defendant, Jack D. Kelly, shall produce the documents sought by Plaintiff by delivering the originals thereof to the offices of Plaintiff's counsel and there allow same to be examined and copied, such production to accomplished on or before 1:00 p.m., Wednesday, March 25, 1992.

DONE AND ORDERED in Chambers, at Pensacola, Escambia County, Florida, this 16th day of March, 1992.

/s/ John T. Parnham
CIRCUIT JUDGE

Conformed Copies to:
Philip A. Bates
Burton E. Strubhar
CR728.PAB

SUPREME COURT OF FLORIDA

DATE March 10, 1992

JACK D. KELLY, etc.	*	
Appellant,	*	CASE NO.
	*	79,254
v.	*	
TREE FARM	*	District Court
DEVELOPMENT	*	of Appeal,
CORPORATION, et al.,	*	1st District -
Appellees.	*	No. 91-1185
**********	*	

Appellant's Motion to Reinstate Appeal filed in the above cause is hereby denied.

OVERTON, McDONALD, BARKETT, KOGAN and HARDING, JJ., concur

TC

A True Copy

TEST:

Sid J. White
Clerk, Supreme Court

[SEAL]

cc. Hon. Jon S. Wheeler, Clerk
Hon. Paul Hartsfield, Clerk
Hon. J. Lewis Hall, Jr., Judge

Burton E. Strubhar, Esquire
Philip A. Bates, Esquire
Stephen R. Moorhead [sic], Esquire
Carl R. Pennington, Esquire
Emory O. Williams, Esquire
Albert C. Penson, Esquire

SUPREME COURT OF FLORIDA

DATE January 27, 1992

JACK D. KELLY, etc. Appellant,	* *	CASE NO. 79,254
v.	* *	DISTRICT COURT OF
Tree Farm Development	* *	APPEAL,
Corporation, ET AL., Appellees.	* *	1st DISTRICT - NO. 91-1185

It appearing to the Court that the District Court of Appeal, First District, did not declare invalid a State Statute or a provision of the State Constitution, and that, therefore, it is without jurisdiction, this appeal is hereby dismissed subject to reinstatement if jurisdiction is established on proper motion filed within fifteen (15) days from the date of this order. See Article V, Section 3(b)(1), Florida Constitution.

H

cc: Hon. Jon S. Wheeler, Clerk
Hon. Paul Hartsfield, Clerk
Hon. J. Lewis Hall, Jr., Judge

Burton E. Strubhar, Esquire
Albert C. Penson, Esquire
Emory O. Williams, Jr., Esquire
Carl R. Pennington, Esquire
Stephen Moorhead, Esquire
Philip A. Bates, Esquire

[Seal]
Supreme Court
of the State of
Florida

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA
DATED January 21, 1992

JACK DAVID KELLY,
Plaintiff,

v.

CASE NO. 91-4119-CA-01
Division "A"

TREE FARM DEVELOPMENT CORPORATION,
Defendant.
_____/

ORDER VACATING AND SETTING ASIDE DEFAULT

This cause having come on to be heard before the Court upon the Motion to Set Aside Default filed herein by the Defendant, Tree Farm Development Corporation, and the Court having reviewed the Court file, and having heard and considered the proof submitted by the parties and the argument of counsel and being otherwise fully advised on the premises, it is thereupon

CONSIDERED, ORDERED AND ADJUDGED that the default heretofore entered in these proceedings by the Clerk of this Court upon the Motion of the Plaintiff, Jack David Kelly, was entered erroneously and the same shall be and is hereby vacated and set aside.

DONE AND ORDERED in Chambers, at Pensacola, Escambia County, Florida, this 21st day of January, 1992.

/s/ Michael Jones
CIRCUIT JUDGE

Conformed Copies to:
Philip A. Bates
Burton E. Strubhar
CR649.PAB

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE December 19, 1991
CASE NO. 91-1185

L.T. CASE NO. 90-3398

Jack D. Kelly, etc. et al.	v.	Tree Farm Development Corp., et al.
appellant (s),		appellee (s)

ORDER

Motion for rehearing, filed November 22, 1991, is DENIED.

By order of the court

JON S. WHEELER
CLERK

I HEREBY CERTIFY that a true and correct copy of the above was mailed this date to the following:

Jack D. Kelly	Burton Strubhar
Philip A. Bates	Stephen Reid Moorhead
Carl r. Pennington, Jr.	Emory O. Williams, Jr.
Albert C. Penson	Cathi O'Halloran Wilkinson

[SEAL]

/s/ Laurie Black
Deputy Clerk

SUPREME COURT OF FLORIDA

DATE December 11, 1991

JACK D. KELLY, etc. Appellant,	* *	CASE NO. 78,995
v.	* *	DISTRICT COURT OF
Tree Farm Development Corporation, ET AL., Appellees.	* *	APPEAL, 1st DISTRICT - NO. 91-1908

It appearing to the Court that the District Court of Appeal, First District, did not declare invalid a State Statute or a provision of the State Constitution, and that, therefore, it is without jurisdiction, this appeal is hereby dismissed subject to reinstatement if jurisdiction is established on proper motion filed within fifteen (15) days from the date of this order. See Article V, Section 3(b)(1), Florida Constitution.

bdm

cc: Hon. Jon S. Wheeler, Clerk
Hon. Ernie Lee Magaha, Clerk

Burton E. Strubhar, Esquire
Philip A. Bates, Esquire

[Seal]
Supreme Court
of the State of
Florida

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE November 14, 1991
CASE NO. 91-01185

L.T. CASE NO. 90-3398

JACK D. KELLY, etc. et al. appellant(s),	vs.	TREE FARM DEVELOPMENT CORP., et al. appellee(s).

ORDER

Appellee's motion for attorney's fees is denied.

By order of the Court

JON S. WHEELER, CLERK

I HEREBY CERTIFY that a true and correct copy of the above was mailed this date to the following:

Jack D. Kelly	Burton Strubhar
Philip A. Bates	Stephen Reid Moorhead
Carl R. Pennington, Jr.	Emory O. Williams, Jr.
Albert C. Penson	Cathi O'Halloran Wilkinson

[SEAL]

By: /s/ Laurie Black
Deputy Clerk

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

JACK D. KELLY, etc. Appellant,	NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED.
v.	
TREE FARM DEVELOPMENT CORP., et al., Appellees.	CASE NO. 91-1185

Opinion filed November 7, 1991.

An Appeal from the Circuit Court for Leon County.
J. Lewis Hall, Jr., Judge.

Burton E. Strubhar, Pensacola, for Appellant.

Carl R. Pennington, Jr. and Cathi C. Wilkinson of Pennington, Wilkinson, Dunlap, Bateman and Camp, P.A., Tallahassee, for Appellee Tree Farm Development Corp.

Philip A. Bates of Clark, Partington, hart, Larry, Bond, Stackhouse & Stone, Pensacola, for Appellee E.D. "Bob" Pierce.

Emory O. Williams, Jr., West Palm Beach, for Appellee Estate of Emory O. Williams.

Stephen R. Moorhead of McDonald, Fleming & Moorhead, Pensacola, of Appellee Estate of Abraham L. Pierce.

PER CURIAM.

AFFIRMED.

JOANOS, C.J., and SMITH and ALLEN, JJ. CONCUR..

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE November 6, 1991
CASE NO. 91-1908

JACK D. KELLY	vs.	TREE FARM DEVELOPMENT CORP.
appellant/petitioner		appellees/respondent

ORDER

Appellee's motion filed October 15, 1991, seeking an award of attorney's fees, is denied.

By order of the court

JON S. WHEELER, CLERK

I HEREBY CERTIFY that a true and correct copy of the above was mailed this date to the following:

Burton E. Strubhar

Philip A. Bates

[SEAL]

By: /s/ Laurie Black
Deputy Clerk

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE October 28, 1991
CASE NO. 91-1908

JACK D. KELLY	vs.	TREE FARM DEVELOPMENT CORP.
appellant/petitioner		appellees/respondent

ORDER

Appellee's motion for rehearing of this court's order of September 10, 1991, is denied.

By order of the court

[SEAL] JON S. WHEELER, CLERK

I HEREBY CERTIFY that a true and correct copy of the above was mailed this date to the following:

Burton E. Strubhar
Philip A. Bates

By: /s/ Sondra Joyner
Deputy Clerk

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

DATED October 22, 1991

JACK D. KELLY, etc.	)	
Appellant,	)	
v.	)	CASE NO. 91-1185
TREE FARM DEVELOPMENT	)	
CORP., et al.,	)	
Appellees.	)	

ORDER

The motion for attorney's fees filed by appellee E. D. "Bob" Pierce on authority of section 57.105, Florida Statutes (1989) is denied.

By Order of the Court dated the 22nd day of October, 1991.

A True Copy

ATTEST

JON S. WHEELER, CLERK [SEAL]

/s/ Jon S. Wheeler
District Court of Appeal, First District
Tallahassee, Florida

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

DATED October 21, 1991

JACK D. KELLY, etc.	)	
Appellant,	)	
v.	)	CASE NO. 91-1185
TREE FARM DEVELOPMENT	)	
CORP., et al.,	)	
Appellees.	)	

ORDER

Appellant's motion for rehearing of this court's order of September 12, 1991 denying appellant's motion to supplement the record is denied.

By Order of the Court dated the 21st day of October, 1991.

A True Copy

ATTEST

JON S. WHEELER, CLERK [SEAL]

/s/ Jon S. Wheeler
District Court of Appeal, First District
Tallahassee, Florida

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE October 17, 1991
CASE NO. 91-1185

Mr. Burton Strubhar, Esq.
3298 Summit Blvd., Ste. 31B
P. O. Box 30215
Pensacola, FL 32503

RE: 91-1185 Jack D. Kelly, et al. v. Tree Farm Development Corp., et al.

Dear Mr. Strubhar:

Pursuant to Rule 9.320, the Court has dispensed with oral argument in the above cause. If the Court reconsiders its decision and wishes argument, you will be notified.

Yours truly,

/s/ Sondra Joyner
Jon S. Wheeler, Clerk
By: Deputy Clerk

JSW/sj

xc: Mr. Jack D. Kelly
Mr. Philip A. Bates, Esq.
Mr. Stephen Reid Moorhead, Esq.
Mr. Carl R. Pennington, Jr., Esq.
Mr. Emory O. Williams, Jr., Esq.
Mr. Albert C. Penson, Esq.

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE September 12, 1991
CASE NO. 91-1185

JACK D. KELLY, etc. et al. appellant/petitioner	vs.	TREE FARM DEVELOPMENT CORP., et al. appellees/respondent

ORDER

Appellee's motion filed August 14, 1991, seeking to supplement the record on appeal, is denied.

By order of the court

JON S. WHEELER, CLERK

I HEREBY CERTIFY that a true and correct copy of the above was mailed this date to the following:

Jack D. Kelly
Philip A. Bates
Carl r. Pennington, Jr.
Emory O. Williams, Jr.
Albert C. Penson

Burton Strubhar
Stephen Reid Moorhead

/s/ Laurie Black
Deputy Clerk

[SEAL]

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE September 10, 1991
CASE NO. 91-1908

LT 91-0309-CA-01

JACK D. KELLY	vs.	TREE FARM DEVELOPMENT CORP.
appellant/petitioner		appellees/respondent

ORDER

Appellee's motion filed July 25, 1991, is granted and this appeal is dismissed for lack of jurisdiction.

By order of the court

JON S. WHEELER, CLERK

I HEREBY CERTIFY that a true and correct copy of the above was mailed this date to the following:

Burton E. Strubhar
Ernie Lee Magaha

Philip A. Bates

[SEAL]

By: /s/ Laurie Black
Deputy Clerk

IN THE CIRCUIT COURT FOR THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA

DATE August 1, 1991

JACK D. KELLY, etc.,
Plaintiff,

CASE NO.: 90-3398

vs.

TREE FARM DEVELOPMENT CORP., et al.,
Defendants.
_____/

ORDER GRANTING MOTION TO WITHDRAW

THIS CAUSE having come to be heard on the motion of attorney, Albert C. Penson, to withdraw as counsel for JACK D. KELLY, individually and JACK D. KELLY as President/Shareholder of Maple Leaf Development Corp., and the Court having reviewed the motion and the file and having found that JACK D. KELLY, individually and JACK D. KELLY as President/Shareholder of Maple Leaf Development Corp., is presently represented by counsel and the court being otherwise advised in the premises, it is hereby

ORDERED AND ADJUDGED that the motion of Albert C. Penson, to withdraw is hereby granted.

DONE AND ORDERED this 1st day of August, 1991, nunc pro tunc, in Chambers at Tallahassee, Leon County, Florida.

/s/ J. Lewis Hall, Jr.
J. LEWIS HALL, JR.
Circuit Judge

Copies to:
Albert C. Penson, Esquire
Philip A. Bates, Esquire
Stephen R. Moorhead, Esquire
Carl R. Pennington, Jr., Esquire
Emory O. Williams, Jr., Esquire
Burton E. Strubhar, Esquire
Jack D. Kelly

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE July 16, 1991

LT 90-3398

CASE NO. 91-1185

JACK D. KELLY, etc. et al. appellant/petitioner	vs.	TREE FARM DEVELOPMENT CORP., et al. appellees/respondent

ORDER

Appellee's motion for treatment as interlocutory appeal for briefing purposes, filed June 28, 1991, is granted.

By order of the court

JON S. WHEELER, CLERK

I HEREBY CERTIFY that a true and correct copy of the above was mailed this date to the following:

Jack D. Kelly
Philip A. Bates
Carl r. Pennington, Jr.
Emory O. Williams, Jr.
Albert C. Penson
Paul F. Hartsfield
Burton Strubhar
Stephen Reid Moorhead

/s/ Laurie Black
Deputy Clerk

[SEAL]

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399
Telephone (904) 488-6151
DATE May 20, 1991

CASE NO. 91-01185

L.T. CASE NO. 90-3398

JACK D. KELLY, etc. et al. appellant(s),	vs.	TREE FARM DEVELOPMENT CORP., et al. appellee(s).

ORDER

Appellant has failed to timely file a completed docketing statement as required by the Court.

Failure to file such completed docketing statement within ten (10) days from the date hereof will result in the imposition of appropriate sanctions by the Court.

By order of the court

JON S. WHEELER, CLERK

I HEREBY CERTIFY that a true and correct copy of the above was mailed this date to the following:

Jack D. Kelly
Philip A. Bates
Carl R. Pennington, Jr.
Albert C. Penson

Burton Strubhar
Stephen Reid Moorhead
Emory O. Williams, Jr.

[SEAL]

/s/ Laurie Black
Deputy Clerk

IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA

DATE March 12, 1991

JACK D. KELLY, individually and
JACK D. KELLY as President/
Shareholder of Maple Leaf
Development Corp.,
Plaintiff,

vs. CASE NO. 90-3398

TREE FARM DEVELOPMENT CORP.;
EMORY O. WILLIAMS, JR.; GEORGE
G. PHILLIPS, JR.; E. D. BOB
PIERCE; and the Estate of
ABRAHAM L. PIERCE,

Defendants.
_____/

ORDER ON MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION OR, IN THE ALTERNATIVE, TRANSFER

THIS CAUSE having come on before the Court upon the Motion of Tree Farm Development Corporation, and other, to dismiss for lack of subject matter jurisdiction and to abate or, in the alternative, transfer for improper venue; and the Court having reviewed the Motions and having heard the argument of counsel and being otherwise fully advised in the premises, finds and decides as follows:

1. This action involves a claim by the Plaintiff which in substance relates to the Plaintiff's claim to title of certain real property situate in Escambia County, Florida. since the action is, therefore, a "local action" it should have been filed in Escambia County, Florida.

2. Under the circumstances, the case should be transferred to Escambia County, Florida. It is, thereupon,

CONSIDERED, ORDERED AND ADJUDGED that this case shall be and the same is hereby transferred to Escambia County, Florida. The Clerk of this Court shall transfer the pleadings file, or a copy thereof, as may be appropriate, to the Clerk of the Circuit Court in and for Escambia County, Florida. The Plaintiff shall be responsible for any filing fees or other transfer costs which may be incurred or required by the Clerk of this Court, or the Clerk of the Circuit Court in and for Escambia County, Florida in connection with such transfer. The Motions to Dismiss the Plaintiff's complaint for failure to state a cause of action have not been heard or disposed of by this Court and the same remain pending. Accordingly, and under the applicable Rules of Civil Procedure, no Answer or other responsive pleading is yet due by those Defendants who have filed with motions to Dismiss for failure to state a cause of action.

DONE AND ORDERED in Chambers at Tallahassee, Leon County, Florida, this 12 day of March 1991.

/s/ J. Lewis Hall, Jr.
CIRCUIT JUDGE

Copies Furnished to:

Philip A. Bates
Stephen R. Moorhead
Carl R. Pennington, Jr.
Emory O. Williams, Jr.
Albert C. Penson

CR015.PAB

IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY, FLORIDA

DATE March 12, 1991

JACK D. KELLY, individually and JACK D. KELLY as President/ Shareholder of Maple Leaf Development Corp.,
Plaintiff,
vs.
TREE FARM DEVELOPMENT CORP.; EMORY O. WILLIAMS, JR.; GEORGE G. PHILLIPS, JR.; E. D. BOB PIERCE; and the Estate of ABRAHAM L. PIERCE,
Defendants.
_____/

CASE NO. 90-3398

ORDER ON MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION OR, IN THE ALTERNATIVE, TRANSFER

THIS CAUSE having come on before the Court upon the Motion of Tree Farm Development Corporation, and others, to dismiss for lack of subject matter jurisdiction and to abate or, in the alternative, transfer for improper venue; and the Court having reviewed the Motions and having heard the argument of counsel and being otherwise fully advised in the premises, finds and decides as follows:

1. This actions involves a claim by the Plaintiff which in substance relates tot the Plaintiff's claim to title of certain real property situate in Escambia County, Florida. since the action is, there fore, a "local action" it should have been filed in Escambia County, Florida.

2. Under the circumstances, the case should be transferred to Escambia County, Florida. It is, thereupon,

CONSIDERED, ORDERED AND ADJUDGED that this case

shall be and the same is hereby transferred to Escambia County, Florida. The Clerk of this Court shall transfer the pleadings file, or a copy thereof, as may be appropriate, to the Clerk of the Circuit court in and for Escambia County, Florida. The Plaintiff shall be responsible for any filing fees or other transfer costs which may be incurred or required by the Clerk of this court, or the Clerk of the Circuit court in and for Escambia County, Florida, in connection with such transfer. The Motions to Dismiss the Plaintiff's Complaint for failure to state a cause of action have not been heard or disposed of by this court and the same remain pending. Accordingly, and under the applicable Rules of Civil Procedure, no Answer or other responsive pleading is yet due by those Defendants who have filed said Motions to Dismiss for failure to state a cause of action.

DONE AND ORDERED in Chambers at Tallahassee, Leon County, Florida this 12 day of March 1991.

/s/ J. Lewis Hall, Jr.
CIRCUIT JUDGE

Copies furnished to:
Philip A. Bates
Stephen R. Moorhead
Carl R. Pennington, Jr.
Emory O. Williams, Jr.
Albert C. Penson

SUPREME COURT OF FLORIDA

DATE March 10, 1991

JACK D. KELLY, etc.	*	
Appellant,	*	CASE NO.
	*	79,254
v.	*	
TREE FARM	*	District Court
DEVELOPMENT	*	of Appeal,
CORPORATION, et al.,	*	1st District -
Appellees.	*	No. 91-1185
**********	*	

Appellant's Motion to Reinstate Appeal filed in the above cause is hereby denied.

OVERTON, McDONALD, BARKETT, KOGAN and HARDING, JJ., concur

A True Copy

TEST:

Sid J. White
Clerk, Supreme Court

[SEAL]

TC

cc. Hon. Jon S. Wheeler, Clerk
Hon. Paul Hartsfield, Clerk
Hon. J. Lewis Hall, Jr., Judge

Burton E. Strubhar, Esquire
Philip A. Bates, Esquire
Stephen R. Moorhead [sic], Esquire
Carl R. Pennington, Esquire
Emory O. Williams, Esquire
Albert C. Penson, Esquire

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, FLORIDA
DATE October 17, 1990

PENSACOLA LOAN & SAVINGS BANK,
a Florida industrial savings bank,
Plaintiff,

vs.

CASE NO. 79-1862-CA-01
DIVISION "B"

EMORY O. WILLIAMS and GLORIA V. WILLIAMS, Husband and Wife, ABE PIERCE and VERA PIERCE, Husband and Wife, E. D. PIERCE, and GEORGE G. PHILLIPS,
Defendants,

vs.

TREE FARM DEVELOPMENT CORPORATION,
Garnishee.

_____/

NOTICE OF GARNISHMENT

To: Emory O. Williams, Jr.
Admiralty Building
Suite 306
4440 PGA Boulevard
Palm Gardens, FL 33410

Gloria V. Williams
Admiralty Building
Suite 306
4440 PGA Boulevard
Palm Gardens, FL 33410

E. D. Pierce
1401 North "B" Street
Pensacola, FL 32501

George G. Phillips
815-B Foxsprings Road
Chesterfield, MO 63017

Tree Farm Development
Corporation
c/o Philip A. Bates, Esquire
700 South Palafox, Suite 3-A
Pensacola, FL 32501

You are notified that a Writ of Garnishment has been served on the above-named Garnishee, and the Garnishee has filed its Answer, a copy of which is attached.

Stephen R. Moorhead, as Personal Representative for the Estate of Abe Pierce, certifies that copies of the Notice of Writ of Garnishment and Garnishee's Answer have been served by certified mail on Defendants: Emory O. Williams, Jr., Admiralty Building, Suite 306, 4440 P G A Boulevard, Palm Beach Gardens, FL 33410; Gloria V. Williams, Jr., Admiralty Building, Suite 306, 4440 P G A Boulevard, Palm Beach Gardens, FL 33410; E. D. Pierce, 1401 N. "B" Street, Pensacola, FL 3250; George G. Phillips, 815-B Foxsprings Road, Chesterfield, Missouri 63017; and Garnishee: Tree Farm Development Corporation, c/o Philip A. Bates, Esquire, 700 South Palafox, Suite 3-A, Pensacola, Florida 32501 who has or appears to have an ownership interest in the deposit, account or other personal property in possession or control of Garnishee at his or their address as shown by the Answer of garnishee.

DATED this the 17th day of October, 1990.

/s/ Stephen R. Moorhead
Stephen R. Moorhead
Florida Bar #613339
McDONALD, FLEMING & MOORHEAD
700 South Palafox Street
Suite 3-C
Pensacola, Florida 32501
(904) 435-9930
Attorneys for Defendant

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, FLORIDA
DATE October 17, 1990

PENSACOLA LOAN & SAVINGS BANK,
a Florida industrial savings bank,
Plaintiff,

vs.

CASE NO. 79-1862-CA-01
DIVISION "B"

EMORY O. WILLIAMS and GLORIA V. WILLIAMS, Husband and Wife, ABE PIERCE and VERA PIERCE, Husband and Wife, E. D. PIERCE, and GEORGE G. PHILLIPS,
Defendants,

vs.

TREE FARM DEVELOPMENT CORPORATION,
Garnishee.
_____/

REPLY

COMES NOW, Stephen R. Moorhead, as Personal Representative of the Estate of Abe Pierce, deceased, pursuant to Section 77.061, Florida Statutes (1989), and makes its reply to the Answer of Garnishee, Tree Farm Development Corporation and says:

1. Your Movant, Stephen R. Moorhead, as Personal Representative of the Estate of Abe Pierce, deceased, generally denies each and all of the allegations contained in paragraphs one through five of Garnishee's, Tree Farm Development Corporation, answer.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Reply has been forwarded to Emory O. Williams, Jr., Admiralty Building, Suite 306, 4440 P G A Boulevard, Palm Beach Gardens, FL

33410, Gloria V. Williams, Jr., Admiralty Building, Suite 306, 4440 P G A Boulevard, Palm Beach Gardens, FL 33410, E. D. Pierce, 1401 N. "B" Street, Pensacola, FL 32501 and George G. Phillips, 815-B Foxsprings Road, Chesterfield, Missouri 63017 the 17th day of October, 1990.

/s/ Stephen R. Moorhead
Stephen R. Moorhead
Florida Bar #613339
McDONALD, FLEMING & MOORHEAD
700 South Palafox Street
Suite 3-C
Pensacola, Florida 32501
(904) 435-9930
Attorneys for Defendant

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, FLORIDA
DATE October 4, 1990

PENSACOLA LOAN & SAVINGS BANK,
a Florida industrial savings bank,
Plaintiff,

vs.

CASE NO. 79-1862-CA-01
DIVISION "B"

EMORY O. WILLIAMS and GLORIA V. WILLIAMS, Husband and Wife, ABE PIERCE and VERA PIERCE, Husband and Wife, E. D. PIERCE, and GEORGE G. PHILLIPS,
Defendants,

vs.

TREE FARM DEVELOPMENT CORPORATION,
Garnishee.
_____/

ANSWER TO WRIT OF GARNISHMENT

COMES NOW the Garnishee, Tree Farm Development Corporation, by and through its undersigned attorneys, and for its answer to the writ of garnishment served upon it in connection with this case in answer to the separately numbered paragraphs thereof, would say as follows:

1. Tree Farm Development corporation is not now currently indebted to the Defendants, Emory O. Williams, Gloria V. Williams, E. D. Pierce, or George G. Phillips. Any obligations which may now exist are contingent, unliquidated and/or disputed. There is no debt currently due.

2. To the best knowledge, information and belief of the Garnishee, there is no tangible or intangible personal property of any of the Defendants in the possession of Tree Farm Development Corporation.

3. While the Garnishee, Tree Farm Development Corporation,

is not in possession of any property of the Defendants, Edward L. Diehl, Robert L. Smith and Bob Pierce, as Trustees, may be in possession of certain shares of stock in Tree Farm Development Corporation, held or arguably claimed by one or more of the Defendants.

4. The undersigned Garnishee is not liable to the Plaintiff in this proceeding on the Writ of Garnishment. Any and all factual allegations of the writ of Garnishment not specifically admitted herein are denied.

5. Tree Farm Development Corporation has retained its undersigned counsel to represent it in connection with this proceeding and has become obligated to pay its attorneys a reasonable fee for services.

/s/ Philip A. Bates
PHILIP A. BATES
BATES & TIPTON, P.A.
700 South Palafox, Ste. 3-A
Pensacola, FL 32501
(904) 469-0202
Attorney for Tree Farm
Development Corporation

Florida Bar No.: 228354

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer to Writ of Garnishment has been furnished to Stephen R. Moorhead, 700 South Palafox, Suite 3-C, Pensacola, FL 32501, by hand delivery, this the 4th day of October, 1990.

/s/ Philip A. Bates
Philip A. Bates

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, FLORIDA
DATE August 22, 1990

PENSACOLA LOAN & SAVINGS BANK,
a Florida industrial savings bank,
Plaintiff,

vs.

CASE NO. 79-1862-CA-01
DIVISION "B"

EMORY O. WILLIAMS and GLORIA V. WILLIAMS, Husband and Wife, ABE PIERCE and VERA PIERCE, Husband and Wife, E. D. PIERCE, and GEORGE G. PHILLIPS,
Defendants,

vs.

TREE FARM DEVELOPMENT CORPORATION,
Garnishee.

WRIT OF GARNISHMENT

THE STATE OF DELAWARE

TO ALL AND SINGULAR THE SHERIFFS OF THE STATE;

YOU ARE COMMANDED to summon the Garnishee to answer this Writ or to serve a copy of this Writ and Summons on the Garnishee.

NOTICE TREE FARM DEVELOPMENT CORPORATION as Garnishee, whose address is c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

You are notified that Defendants, EMORY O. WILLIAMS, GLORIA V. WILLIAMS, E. D. PIERCE, and GEORGE G. PHILLIPS are indebted to The Estate of Abe Pierce, Deceased on an unsatisfied Judgment in the amount of $17,308.70 plus interest and costs.

No later than 20 days after receipt of this Writ, you are required to file in writing an answer to it, whether at the time of service of this Writ, at the time of filing your answer, or at any time between such times:

1. You are or were indebted to Defendants, EMORY O. WILLIAMS, GLORIA V. WILLIAMS, E. D. PIERCE, and GEORGE G. PHILLIPS and if so, in what amount.

2. What tangible or intangible personal property of Defendant is or was in your possession or control.

3. Whether you know of any other person indebted to Defendant or who may have possession or control of property of Defendants, EMORY O. WILLIAMS, GLORIA V. WILLIAMS, E. D. PIERCE, and GEORGE G. PHILLIPS.

You must serve by mail a copy of your answer on the Personal Representative for the Estate of Abe Pierce, Deceased, STEPHEN R. MOORHEAD, ESQUIRE, Whose address is 700 South Palafox Street, Suite 3-C, Pensacola, Florida 32501.

After receipt of this Writ you may be liable to The Estate of Abe Pierce; Deceased, up to the amount of the unsatisfied Judgment, for any debt from you to defendants, and for any of Defendants' personal property in your possession or control. Further, you are required to retain any such debt due Defendant and to retain the personal property of Defendants pending further Court order.

FAILURE TO ANSWER THIS WRIT OR TO RETAIN THE DEBT OR PERSONAL PROPERTY MAY MAKE YOU LIABLE TO THE EXTENT OF THE UNSATISFIED JUDGMENT.

One Hundred Dollars ($100.00) have been deposited into the escrow account of the Court to assist in obtaining the service of any attorney in answering this Writ.

WITNESS my hand and seal of this Court on this 22 day of August, 1990.

ERNIE LEE MAGAHA
Clerk of the Court

By: /s/ Grace Edwards
Deputy Clerk

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, FLORIDA
DATE August 21, 1990

PENSACOLA LOAN & SAVINGS BANK,
a Florida industrial savings bank,
Plaintiff,

vs.

CASE NO. 79-1862-CA-01
DIVISION "B"

EMORY O. WILLIAMS and GLORIA V. WILLIAMS, Husband and Wife, ABE PIERCE and VERA PIERCE, Husband and Wife, E. D. PIERCE, and GEORGE G. PHILLIPS,
Defendants,

vs.

TREE FARM DEVELOPMENT CORPORATIGN,
Garnishee.
_____/

ORDER FOR ISSUANCE OF WRIT OF GARNISHMENT

The Estate of Abe Pierce, Deceased, by and through its personal representative, has applied for a Writ of Garnishment. After consideration of the documents received, it appears that the application should be granted. It is therefore

ORDERED AND ADJUDGED that a Writ of Garnishment be issued.

DONE AND ORDERED in Chambers, Escambia County, Florida, this 21st day of August, 1990.

/S/ John P. Kuder
CIRCUIT JUDGE

Conformed copies to:
Stephen R. Moorhead, Esquire

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, FLORIDA
DATE July 16, 1979

PENSACOLA LOAN & SAVINGS BANK,
a Florida industrial savings bank,
Plaintiff,

vs.

CASE NO. 79-1862-CA-01
DIVISION "E"

EMORY O. WILLIAMS and GLORIA V. WILLIAMS, Husband and Wife, ABE PIERCE and VERA PIERCE, Husband and Wife, E. D. PIERCE, and GEORGE G. PHILLIPS,
Defendants.

_____/

FINAL JUDGMENT

THIS CAUSE having come on to be heard by this Court and the Court having heard argument of counsel for the parties and having considered the testimony of the Plaintiff's witness, the Plaintiff's Affidavits and Exhibit, and having reviewed the Court file, and being otherwise fully advised in the premises, now, therefore, it is

ORDERED AND ADJUDGED:

That the Plaintiff, Pensacola Loan & Savings Bank, a Florida industrial savings bank, recover from the Defendants, Emory O. Williams and Gloria V. Williams, husband and wife, Abe Pierce and Vera Pierce, husband and wife, E.D. Pierce, and George G. Phillips, jointly and severally, the sum of $16,450.70 as principal and interest on the note sued upon herein, attorney's fees in the sum of $750.00 and costs in the sum of $108.00 making a total amount of $17,308.70, for which let execution issue.

DONE AND ORDERED in Chambers at Pensacola, Escambia County, Florida, this 16th day of July, 1979.

/S/ M C Blanchard
CIRCUIT JUDGE

Copies Furnished to:
C. Miner Farrell, Esquire
George G. Phillips, Esquire

(2)

Supreme Court, U.S.
FILED
JAN 4 1996
CLERK

No. 95-882

In The

Supreme Court of the United States

October Term, 1995

JACK DAVID KELLY, individually and
JACK DAVID KELLY, as President/Shareholder of
MAPLE LEAF DEVELOPMENT CORPORATION,

Petitioner,

vs.

TREE FARM DEVELOPMENT CORPORATION;
EMORY O. WILLIAMS, JR.; THE ESTATE OF GEORGE
G. PHILLIPS, JR.; E. D. "BOB" PIERCE; and THE
ESTATE OF ABRAHAM L. PIERCE,

Respondents.

On Petition For Writ Of Certiorari
To The District Court Of Appeal, First District
For The State Of Florida

BRIEF OF RESPONDENTS TREE FARM DEVELOPMENT CORPORATION AND E. D. "BOB" PIERCE IN OPPOSITION TO CERTIORARI

DENNIS K. LARRY
Counsel of Record

PHILIP A. BATES
MARGARET C. RODGERS
CLARK PARTINGTON HART
LARRY BOND STACKHOUSE & STONE
125 West Romana Street, Suite 800
POB 13010
Pensacola, FL 32591-3010
904/434-9200

Counsel for Tree Farm Development Corporation and E. D. "Bob" Pierce, Respondents

January 4, 1996

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

42 pp

QUESTIONS PRESENTED FOR REVIEW

In accordance with Rule 15.2, Rules of the Supreme Court of the United States, Respondents, Tree Farm Development Corporation (Tree Farm) and E. D. "Bob" Pierce (Pierce) respectfully submit that the following questions more accurately reflect the issues which would be reviewed by this Court should certiorari be granted than do the questions posed by the Petitioner.

A. WHETHER THE SUPREME COURT OF THE STATE OF FLORIDA, AS A MATTER OF FLORIDA CONSTITUTIONAL LAW, HAD JURISDICTION TO REVIEW A *PER CURIAM* AFFIRMANCE BY THE FIRST DISTRICT COURT OF APPEAL OF THE ORDER OF THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA, GRANTING SUMMARY JUDGMENT IN FAVOR OF THE RESPONDENTS ON AN ISSUE OF STATE COMMON LAW.

B. WHETHER THE DECISION OF THE SUPREME COURT OF THE STATE OF FLORIDA THAT IT LACKED JURISDICTION OVER PETITIONER'S PETITION FOR REVIEW OF THE *PER CURIAM* AFFIRMANCE BY THE FIRST DISTRICT COURT OF APPEAL OF THE ORDER OF THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA, GRANTING SUMMARY JUDGMENT IN FAVOR OF RESPONDENTS ON AN ISSUE OF STATE COMMON LAW VIOLATED PETITIONER'S CONSTITUTIONAL RIGHTS UNDER EITHER THE FLORIDA CONSTITUTION OR THE CONSTITUTION OF THE UNITED STATES.

QUESTIONS PRESENTED FOR REVIEW – Continued

C. WHETHER THE ORDER OF THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA, GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT AND ENTERING FINAL JUDGMENT IN FAVOR OF RESPONDENTS DEPRIVED PETITIONER OF HIS RIGHT TO TRIAL BY JURY AND RIGHT OF ACCESS TO THE COURTS UNDER THE FLORIDA CONSTITUTION.

D. WHETHER THE CONDUCT OF THE DEFENSE ATTORNEY IN ALLEGEDLY MAKING MISREPRESENTATIONS OF FACT DURING THE SUMMARY JUDGMENT PROCEEDINGS BELOW AND THE CONDUCT OF THE TRIAL COURT JUDGE IN ALLEGEDLY APPLYING THE MISREPRESENTATIONS IN A MANNER PREJUDICIAL TOWARDS PETITIONER WHEN GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT VIOLATED PETITIONER'S CONSTITUTIONAL RIGHTS UNDER EITHER THE FLORIDA CONSTITUTION OR THE CONSTITUTION OF THE UNITED STATES.

E. WHETHER THE ORDER OF THE CIRCUIT COURT IN AND FOR LEON COUNTY, FLORIDA, TRANSFERRING PETITIONER'S DECLARATORY JUDGMENT ACTION FROM LEON COUNTY, FLORIDA, TO ESCAMBIA COUNTY, FLORIDA, BASED ON THE STATE'S LOCAL

QUESTIONS PRESENTED FOR REVIEW – Continued

ACTION RULE VIOLATED PETITIONER'S DUE PROCESS RIGHTS UNDER THE FLORIDA CONSTITUTION AND THE CONSTITUTION OF THE UNITED STATES.

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I.

THE PETITION FOR WRIT OF CERTIORARI WAS NOT TIMELY FILED, AND THEREFORE, THIS COURT DOES NOT HAVE JURISDICTION PURSUANT TO 28 U.S.C. § 2101(c) AND RULE 13 OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES 7

II.

THE PETITIONER HAS FAILED TO PRESENT ANY SUBSTANTIAL FEDERAL QUESTION RAISED IN THE PROCEEDINGS BELOW AND DECIDED BY THE STATE COURTS WHICH WOULD WARRANT THE EXERCISE OF THIS COURT'S CERTIORARI JURISDICTION 9

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RESPONDENTS' BRIEF IN OPPOSITION TO CERTIORARI

JURISDICTION

Petitioner's Motion For Rehearing in the First District Court of Appeal was denied on April 24, 1995 (R.App. 3). Petitioner apparently seeks to invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1257(3) and Rule 10(b) of the Rules of the Supreme Court of the United States.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

Section 1, Amendment XIV to the United States Constitution, sets forth the "due process" rights of the citizens of the United States. It reads as follows:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article I, Section 9 of the Constitution of the State of Florida (1968), as amended, sets forth the "due process" rights of citizens of the State of Florida. It reads as follows:

> Section 9. Due Process. – No person shall be deprived of life, liberty or property without due

process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against himself.

Article V, Section 3(b) of the Constitution of the State of Florida (1968), as amended, sets forth the jurisdiction of the Supreme Court of the State of Florida. Its provisions are set forth below:

(b) JURISDICTION. – The supreme court:

(1) Shall hear appeals from final judgments of trial courts imposing the death penalty and from decisions of the district courts of appeals declaring invalid a state statute of a provision of the state constitution.

(2) When provided by general law, shall hear appeals and final judgments entered in proceedings for the validation of bonds or certificates of indebtedness and shall review actions of statewide agencies relating to rates or service of utilities providing electric, gas or telephone service.

(3) May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution or that expressly affects a class of constitutional or state officers, or that expressly and directly conflicts with the decision of another district court of appeal or of the supreme court on the same question of law.

(4) May review any decision of a district court of appeal that passes upon a question

certified by it to be of great public importance, or that is certified by it to be in direct conflict with the decision of another district court of appeal.

(5) May review any order or judgment of a trial court certified by the district court of appeal in which an appeal is pending to be of great public importance, or to have a great effect upon the proper administration of justice throughout the state, and certified to require immediate resolution by the supreme court.

(6) May review a question of law certified by the Supreme Court of the United States or a United States Court of Appeals which is determinative of the cause and for which there is no controlling precedent of the supreme court of Florida.

(7) May issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction.

(8) May issue writs of mandamus and quo warranto to state officers and state agencies.

(9) May, or any justice may, issue writs of habeas corpus returnable before the supreme court or any justice, a district court of appeal or any judge thereof, or any circuit judge.

(10) Shall, when requested by the attorney general pursuant to the provisions of Section 10 of Article IV, render an advisory opinion of the justices, addressing issues as provided by general law.

Article V, Section 4(b) of the Constitution of the State of Florida (1968), as amended, sets forth the jurisdiction of the Districts Courts of Appeal of the State of Florida. Its provisions are set forth below:

(b) JURISDICTION. –

(1) District courts of appeal shall have jurisdiction to hear appeals, that may be taken as a matter of right, from final judgments or orders of trial courts, including those entered on review of administrative action, not directly appealable to the supreme court or a circuit court. They may review interlocutory orders in such cases to the extent provided by rules adopted by the supreme court.

(2) District courts of appeal shall have the power of direct review of administrative action, as prescribed by general law.

(3) A district court of appeal or any judge thereof may issue writs of habeas corpus returnable before the court or any judge thereof or before any circuit judge within the territorial jurisdiction of the court. A district court of appeal may issue writs of mandamus, certiorari, prohibition, quo warranto, and other writs necessary to the complete exercise of its jurisdiction. To the extent necessary to dispose of all of the issues in a cause properly before it, a district court of appeal may exercise any of the appellate jurisdiction of the circuit courts.

Article I, Section 21 of the Constitution of the State of Florida (1968), as amended, sets forth Florida citizens' right of access to courts and provides as follows:

> The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

Article I, Section 22 of the Constitution of the State of Florida (1968), as amended, sets forth Florida citizens' right of trial by jury and provides as follows:

> The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law.

Rule 9.330(a), Florida Rules of Appellate Procedure governs the time for filing motions for rehearing of an appellate court decision and provides as follows:

> **(a) Time for Filing: Contents; Reply**. A motion for rehearing, clarification, or certification may be filed within 15 days of an order or within such other time set by the court. . . .

STATEMENT OF THE CASE

The Petition for Writ of Certiorari does not contain a Statement of the Case. Accordingly, Respondents respectfully submit a brief description of the material proceedings which resulted in this Petition for Certiorari.

On June 3, 1994, the Circuit Court in and for Escambia County, Florida, entered an order granting Respondents' motion for summary judgment and quieting title to certain real property situate in Escambia County, Florida,

to the Respondents (R.App. 12). Final judgment was then entered in favor of Respondents (R.App. 5). The essence of the case involved the propriety of a merger between Petitioner's former corporation and the Respondents which resulted in the Respondents acquiring title to the subject property. Petitioner objected to the merger on the grounds of fraud and deceit and insisted title to the subject real property never lawfully passed to Respondents.[1]

Petitioner appealed the circuit court's decision to the First District Court of Appeal, and on March 10, 1995, the District Court of Appeal entered a *per curiam* (without opinion) affirmance of the circuit court's ruling (R.App. 4). On March 29, 1995, Petitioner filed a motion for rehearing in the District Court of Appeal, which was denied by the court on April 24, 1995 (R.App. 3). Petitioner then petitioned the Supreme Court of Florida for review of the District Court of Appeal's *per curiam* decision, and on May 3, 1995, the Supreme Court of Florida dismissed the petition (R.App. 2). Petitioner then filed a motion for reinstatement of the appeal, which was denied by the Supreme Court of Florida on September 6, 1995 (R.App. 1). On December 5, 1995, Petitioner filed the instant Petition For Writ of Certiorari in this Court.

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[1] The facts of the case are set forth more fully in the circuit court's Order (R.App. 13).

ARGUMENT

I.

THE PETITION FOR WRIT OF CERTIORARI WAS NOT TIMELY FILED, AND THEREFORE, THIS COURT DOES NOT HAVE JURISDICTION PURSUANT TO 28 U.S.C. § 2101(c) AND RULE 13 OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES.

Title 28, United States Code, § 2101(c) and Rule 13 of the Rules of the Supreme Court of the United States require that petitions for writs of certiorari to review a judgment entered by a state court of last resort must be filed with the Clerk of the Court within 90 days of the entry of judgment. The question then becomes one of determining precisely what "judgment" is sought to be reviewed.

Respondents Tree Farm and Pierce respectfully submit that the operative order in this case is the District Court of Appeal's March 10, 1995, *per curiam* affirmance of the circuit court's order and entry of final judgment in favor of Respondents on their motion for summary judgment (R.App. 4). Pursuant to Rule 9.330(a) of the Florida Rules of Appellate Procedure, Petitioner's time for filing a motion for rehearing of the District Court of Appeal's *per curiam* decision expired on March 25, 1995. Petitioner did not file his motion for rehearing until March 29, 1995, and the motion, which was untimely, was denied by the District Court of Appeal on April 24, 1995 (R.App. 3). Petitioner then petitioned the Supreme Court of Florida for review, and on May 3, 1995, the Supreme Court of Florida dismissed Petitioner's petition, noting the absence of jurisdiction over the appeal (R.App. 2).

Petitioner then filed a motion for reinstatement, which was denied by the Supreme Court of Florida on September 6, 1995, with an award of attorney's fees in Respondents' favor (R.App. 1). Petitioner filed his Petition For Writ of Certiorari in this Court on December 5, 1995, identifying the Supreme Court of Florida's September 6, 1995, Order as the order appealed from.

The Florida Constitution, Article V, Section 3(b), was amended in 1980, limiting the appellate jurisdiction of the Florida Supreme Court. The 1980 Amendment made the district courts of appeal the "court of last resort" for most cases. *Cf.*, Fla. Const. Art. V, Section 4(b) (1968), as amended. This limited jurisdiction of the Florida Supreme Court has been previously recognized by this Court. *See Palmore v. Sidoti*, 466 U.S. 429, 431 (1984); *Williams v. Florida*, 399 U.S. 78, 80 n.5 (1970). Further, the Florida Supreme Court has held that it does not have jurisdiction to review a "per curiam affirmed" decision (without opinion) of a district court of appeal. *Dodi Publishing Company v. Editorial America, S. A.*, 385 So. 2d 1369 (Fla. 1980); *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980). This lack of jurisdiction was also recognized in this very case by the Supreme Court of Florida in its order of May 3, 1995, dismissing Petitioner's petition for review of the District Court of Appeal's *per curiam* decision (R.App. 2).

Consequently, in this case, the District Court of Appeal was the "court of last resort" for the Petitioner, and Petitioner had, at the very latest, 90 days from the date of its April 24, 1995, Order denying his motion for

rehearing in which to file his Petition For Writ of Certiorari in this Court.[2] Petitioner did not file his Petition in this Court until 125 days after the District Court of Appeal's April 24, 1995, Order, and, therefore, the Petition For Writ of Certiorari in this case is untimely and should be dismissed for want of jurisdiction.

II.

THE PETITIONER HAS FAILED TO PRESENT ANY SUBSTANTIAL FEDERAL QUESTION RAISED IN THE PROCEEDINGS BELOW AND DECIDED BY THE STATE COURTS WHICH WOULD WARRANT THE EXERCISE OF THIS COURT'S CERTIORARI JURISDICTION.

As an initial matter, Rule 14(1)(g)(i) of the Rules of the Supreme Court of the United States requires a Petitioner seeking to invoke the Court's powers of discretionary review over a state court judgment to specify in the Statement of the Case

> the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; and pertinent quotations of specific portions of the record or summary

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[2] Respondents submit that because Petitioner's motion for rehearing in the District Court of Appeal was untimely, the actual time for filing the Petition for Writ of Certiorari in this Court commenced on March 10, 1995, the date on which the District Court of Appeal entered its *per curiam* affirmance of the circuit court's order.

> thereof, with specific reference to the places in the record where the matter appears . . . , so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari. . . .

Sup. Ct. R. 14(1)(g)(i). The Petitioner in this case has made no effort whatsoever to comply with Rule 14, and instead has submitted a rambling recitation of numerous state and federal constitutional and statutory provisions with no identifiable connection to the proceedings below.

Notwithstanding Petitioner's failure to comply with the technical dictates of Rule 14, the Petition for Writ of Certiorari is fundamentally flawed and fails to confer jurisdiction on this Court. Rule 10 of the Rules of the Supreme Court of the United States, requires a "compelling reason" for the invocation of the Court's certiorari jurisdiction. Sup. Ct. R. 10. The existence of a federal question is a jurisdictional prerequisite to the granting of a petition for certiorari. *Herb v. Pitcairn*, 324 U.S. 117, 1125-26 (1945). Further, this Court has recognized that the principal purpose of certiorari jurisdiction is to resolve conflicts among circuit courts of appeals and state courts concerning the meaning of provisions of federal law. *Braxton v. United States*, 111 S. Ct. 1854, 114 L.Ed.2d 385 (1991).

Not only must the issue at stake before this Court involve federal law, it must also have been properly raised in a prior state court proceeding. This Court has long held that the federal question must have been raised, presented and pursued in a timely and proper manner at the appropriate point or points in the state court proceedings. *Beck v. Washington*, 369 U.S. 541,

550-554 (1962); *Godchaux Company v. Estopinal*, 251 U.S. 179, 181 (1919). Absent this having occurred, this Court is without jurisdiction to review the state court judgment. *See Crowell v. Randell*, 10 Pet. 368, 391-98 (1836). *See also, Illinois v. Gates*, 462 U.S. 213, 218-20 (1983); *Cardinale v. Louisiana*, 394 U.S. 437, 439 (1969). If "the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." *Street v. New York*, 394 U.S. 576, 582 (1969). If the highest state court is silent on the asserted federal question, the Court will assume, unless it can be affirmatively shown otherwise, that the state court's silence is due to the procedural deficiency of the assertion of the federal question. *Bailey v. Anderson*, 326 U.S. 203, 206-07 (1945); *Mutual Life Insurance Company v. McGrew*, 188 U.S. 291, 309 (1903). Further, this Court has held that a petitioner may very well have waived a federal issue that has not been asserted and argued before the highest state court. *Beck v. Washington*, 369 U.S. at 553.

This Court has also held in the past that merely referring to "due process of law" is insufficient to properly frame a federal question for the Court's exercise of jurisdiction. *Bowe v. Scott*, 233 U.S. 658, 664-65 (1914). *See also Brady v. Maryland*, 373 U.S. 83, 91 (1963) (opinion of White, J.); *Minnesota v. National Tea Company*, 309 U.S. 551, 559 (1940) (Hughes, C. J. dissenting). Finally, if the petitioner does not raise the federal question until the Petition for Writ of Certiorari, as has happened in this case, the assertion of the federal question comes too late. *See White River Lumber Company v. Arkansas, Ex Rel. Applegate,*

279 U.S. 692, 700 (1929); *Whitney v. California*, 274 U.S. 357, 362-63 (1927); *Hiawassee River Power Company v. Carolina-Tennessee Power Company*, 252 U.S. 341, 344 (1920); *Thomas v. Iowa*, 209 U.S. 258 (1908).

Petitioner argues in his petition that he has been deprived of his constitutional rights by the actions of the attorneys and judicial officers in the state court proceedings below. More specifically, he claims that he has been denied his right to a jury trial and right of access to the courts based on the Respondents' attorney's alleged misrepresentation of facts to the trial court during the summary judgment proceedings below, and the trial court's alleged acceptance and application of the allegedly misstated facts in a manner prejudicial towards him when it granted Respondents' motion for summary judgment. Petitioner also argues that the Florida Supreme Court's failure to exercise jurisdiction over his appeal from the District Court of Appeal violated his constitutional right of access to the courts. Finally, Petitioner continues to argue, as he did in his previous Petition For Writ of Certiorari filed in this Court in 1992,[3] that his due process rights were violated by an order entered early on in this case by the Circuit Court in and for Leon County, Florida, which transferred his declaratory judgment action from Leon County, Florida to Escambia County, Florida pursuant to the state's Local Action Rule.

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[3] This petition was denied by this Court on October 13, 1992 (R.App. 18).

First, with the possible exception of Petitioner's lingering due process claim,[4] no federal claim has been raised in any of the state court proceedings below. Accordingly, there is no state court decision on a federal question currently facing this Court. Next, even if the Petitioner had properly presented and argued his claims as federal questions in the state courts below, which Respondents submit he did not, the issues implicated in the instant case are not federal; they are rooted exclusively in state law.

Specifically, Petitioner's due process claim arises solely in the context of the circuit court's construction of the Florida "Local Action Rule." *See Georgia Casualty Company v. O'Donnell*, 109 Fla. 290, 147 So. 267 (1933). Federal concerns are in no way implicated by this decision. Likewise, Petitioner's present claims of having been deprived of his right to a trial by a jury and his right of access to the courts by the decisions of the Florida courts below are based exclusively on state law. The Petition expressly refers to Sections 22 and 23 of the Florida Constitution for the assertion of these rights, and Petitioner's oblique reference to 42 U.S.C. § 1983 cannot alter the basic state law character of these claims. *See* Art. 1, Sections 22 and 23 of the Constitution of the State of Florida (1968), as amended. Consequently, none of the issues raised by Petitioner in the instant petition encompasses a "compelling" consideration for the exercise of this Court's certiorari jurisdiction.

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[4] It is unclear whether Petitioner bases his due process argument on Article 1, Section 9 of the Florida Constitution or the Fourteenth Amendment to the United States Constitution.

Moreover, any inquiry by this Court into the circuit court's order granting Respondents' motion for summary judgment would necessarily involve review of the trial court's finding that no genuine issue of material fact existed, a rare function of this Court's discretionary powers. *See* Sup. Ct. R. 10 (1995); *NLRB v. Hendricks County Rural Electric Co.*, 454 U.S. 170, 176 n.8 (1981); *United States v. Johnston*, 268 U.S. 220, 227 (1925).

In summary, Petitioner has failed to timely and properly raise any federal question at any level of the state court proceedings below, let alone a substantial one. Accordingly, there has not been a decision on an important question of federal law by any court in this case that warrants review by this Court.

CONCLUSION

This Court should not grant the Petition For Writ of Certiorari in this case for two reasons. First, and foremost, the Court lacks jurisdiction over the Petition based on the Petitioner's untimely filing. Second, Petitioner has failed to raise an important federal question decided by a court below which warrants review and consideration by this Court. Based on the foregoing, Respondents Tree Farm and Pierce respectfully submit that this Court should decline to exercise its discretionary power to

review the state court's decision in this case by writ of certiorari.

Respectfully submitted,

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904/434-9200
Counsel for Respondents

No. 95-882

In The

Supreme Court of the United States

October Term, 1995

JACK DAVID KELLY, individually and
JACK DAVID KELLY, as President/Shareholder of
MAPLE LEAF DEVELOPMENT CORPORATION,

Petitioner,

vs.

TREE FARM DEVELOPMENT CORPORATION;
EMORY O. WILLIAMS, JR.; THE ESTATE OF GEORGE
G. PHILLIPS, JR.; E. D. "BOB" PIERCE; and THE
ESTATE OF ABRAHAM L. PIERCE,

Respondents.

On Petition For Writ Of Certiorari
To The District Court Of Appeal, First District
For The State Of Florida

APPENDIX TO BRIEF OF RESPONDENTS TREE FARM DEVELOPMENT CORPORATION AND E. D. "BOB" PIERCE IN OPPOSITION TO CERTIORARI

SUPREME COURT OF FLORIDA

WEDNESDAY, SEPTEMBER 6, 1995

JACK KELLY, Appellant, v. TREE FARM DEVELOPMENT CORPORATION, etc., Appellee.	*	CASE NO. 85,600 District Court of Appeal, 1st District – No. 94-2167

Appellant's Motion for Reinstatement filed in the above cause is hereby denied.

Appellant's Motion to Strike Motion is hereby denied.

Appellee's Motion for Attorney's Fees is granted; and said attorney is hereby allowed a fee of one thousand dollars ($1,000.00) for services in this Court, said sum to be paid to said attorney by appellant after final disposition of this cause. SHAW, KOGAN, HARDING, WELLS and ANSTEAD, JJ., concur

A True Copy

TEST: (SEAL)

By: /s/ T. Carroll
Deputy Clerk

Sid J. White
Clerk, Supreme Court

TC

cc: Hon. Jon S. Wheeler, Clerk
Hon. Ernie Lee Magaha, Clerk
Hon. Joseph O. Tarbuck, Judge

Mr. Jack David Kelly
Mr. Stephen Moorhead
Mr. E. D. "Bob" Pierce
Mr. Carl R. Pennington, Jr.
Mr. Emory O. Williams
Mr. Phillip A. Bates

SUPREME COURT OF FLORIDA

WEDNESDAY, MAY 3, 1995

JACK KELLY,	**	
Appellant/Petitioner,	**	CASE NO. 85,600
v.	**	DISTRICT COURT
TREE FARM DEVELOPMENT CORPORATION, ETC.,	** **	OF APPEAL, 1ST DISTRICT – NO. 94-2167
Appellee/Respondent.	**	

It appearing to the Court that it is without jurisdiction, the Petition for Review is hereby dismissed and no motion for rehearing will be entertained by the Court.

It appearing to the Court that the District Court of Appeal, First District, did not declare *invalid* a State Statute or a provision of the State Constitution, and that, therefore, it is without jurisdiction, this appeal is hereby dismissed subject to reinstatement if jurisdiction is established on proper motion *filed* within fifteen (15) days from the date of this order. See Article V, Section 3(b)(1), Florida Constitution.

A True Copy

TEST: (SEAL)

By: /s/ Sid J. White
Sid J. White
Clerk Supreme Court

H

cc: Hon. Jon S. Wheeler, Clerk
Hon. Ernie Lee Magaha, Clerk
Hon. Joseph O. Tarbuck, Judge

Mr. Jack David Kelly
Mr. Stephen Moorhead
Mr. E. D. "Bob" Pierce
Mr. Carl R. Pennington, Jr.
Mr. Emory O. Williams
Mr. Phillip A. Bates

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, Florida 32399
Telephone No. (904) 488-6151

April 24, 1995

CASE NO.: 94-02167

L.T. CASE NO. 91-0309

Jack Kelly v. Tree Farm Development Corporation

Appellant(s), Appellee(s).

BY ORDER OF THE COURT:

Motion for rehearing, filed March 29, 1995, is DENIED.

Motion to accept, filed March 29, 1995, is DENIED.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

/s/ Jon S. Wheeler (SEAL)
JON S. WHEELER, CLERK

By: /s/ Sondra Joyner
Deputy Clerk

Jack D. Kelly

Copies:

Sherry Grant Hall
Philip A. Bates

IN THE DISTRICT COURT OF APPEAL,

FIRST DISTRICT, STATE OF FLORIDA

JACK KELLY,

Appellant,

v.

TREE FARM DEVELOPMENT CORPORATION, a foreign corporation,

Appellee.

_____/

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED.

CASE NO. 94-2167

Opinion filed March 10, 1995.

An appeal from the Circuit Court for Escambia County. Joseph Q. Tarbuck, Judge.

Sherry Grant Hall of The Hall Law Firm, P.A., Destin, for Appellant.

Philip A. Bates of Clark, Partington, Hart, Larry, Bond, Stackhouse & Stone, Pensacola, for Appellee.

PER CURIAM.

AFFIRMED.

WEBSTER, MICKLE and BENTON, JJ., CONCUR.

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

TREE FARM DEVELOPMENT CORPORATION,

Plaintiff,

v.

JACK D. KELLY,

Defendant.

Case No. 93-181 and No. 91-4119 consolidated into CASE. NO. 91-0309-CA-01 Division "C"

FINAL JUDGMENT

THIS CAUSE having come on to [sic] heard before the Court upon the Motion of Tree Farm Development Corporation for Summary Final Judgment, and the Court having reviewed all of the pleadings and papers in this case, which includes Case No. 93-181 in the Circuit Court in and for Escambia County, Florida, transferred from the Circuit Court, Second Judicial Circuit in and for Leon County, Florida, and consolidated into Case No. 91-0309 in the Circuit Court in and for Escambia County, Florida; as well as Case No. 91-4119 in the Circuit Court in and for Escambia County, Florida, consolidated into this Case No. 91-0309, and the proofs submitted by the Plaintiff, the discovery and other papers in the consolidated court file, and having heard the argument of counsel and being otherwise fully advised in the premises, finds and decides that there is no genuine issue of material fact and the Plaintiff is entitled to judgment as a matter of law. It is thereupon

CONSIDERED, ORDERED AND ADJUDGED as follows:

1. The title of the Plaintiff, Tree Farm Development Corporation, to the following described real property in Escambia County, Florida:

Parcel 1:

Commencing at the Northwest corner of Section 9, Township 1 South, Range 31 West, Escambia County, Florida; thence run South along the West line of said Section 9 for 89.95 feet to the South right of way line of State Highway No. 10 (200' R/W Nine Mile Road) and the Point of Beginning: Thence continue South and along the West line of Section 9 for 2544.21 feet; thence 90°18'33" left for 2653.89 feet; thence 89°43'42" left for 2548.40 feet to the South right of way line of State Highway No. 10; thence 90°21'15" and along said right of way line for 2651.91 feet to the Point of Beginning, containing 155.08 acres.

Parcel 2:

Commencing at the Southwest corner of Section 9, Township 1 South, Range 31 West, Escambia County, Florida; thence run East along the South line of Section 9 for 2655.94 feet; thence 89°51'33" left for 2640.65 feet; thence 90°16'18" left for 2653.89 feet to the West line of Section 9; thence 89°41'27" left and along the West line of said Section 9 for 2634.16 feet to the Point of Beginning, containing 160.74 acres.

Parcel 3:

Commencing at the Northwest corner or Section 16, Township 1 South, Range 31 West, Escambia

County, Florida; thence run South along the West line of said Section 16 for 1980.82 feet; thence 91°09'39" left for 1318.90 feet; thence 90°12'59" right for 672.70 feet; thence 90°02'54" left for 1337.33 feet; thence 89°46'43" left for 2640.31 feet to the North line of Section 16; thence 90°08'27" left and along the North line of said Section 16 for 2655.94 feet to the Point of Beginning, containing 141.31 acres.

Parcel 4-A

Commencing at the Southeast corner of Section 8, Township 1 South, Range 31 West, Escambia County, Florida; thence run West along the South line of said Section 8 for 1992.16 feet; thence 90°27'09" right for 2639.37 feet; thence 89°41'50" right for 1941.42 feet to the East line of Section 8, thence 90°17'24" right and along the East line of said Section 8 for 2634.16 feet to the Point of Beginning, containing 120.57 acres.

Parcel 4-B

Commencing at the Southeast corner of Section 8, Township 1 South, Range 31 West, Escambia County, Florida; thence run West along the South line of said Section 8 for 1992.16 feet to the Point of Beginning: Thence continue West along same line for 1992.16 feet; thence 90°27'55" right for 2644.59 feet; thence 89°41'04" right for 1991.42 feet; thence 90°18'10" right for 2639.37 feet to the Point of Beginning, containing 120.81 acres.

Parcel 5:

Commencing at the Northwest corner of Section 9, Township 1 South, Range 31 West, Escambia County, Florida; thence run South along the East line of said Section 9 for 94.46 feet to the South

right of way line of State Highway No. 10 (200' R/W Nine Mile Road) and the Point of Beginning: Thence continue South and along the East line of said Section 9 for 2552.68 feet; thence 89°45'56" right for 2653.88 feet; thence 90°16'18" right for 2548.40 feet to the South right of way line of State Highway No. 10; thence 89°38'45" right and along said right of way line for 2651.90 feet to the Point of Beginning, containing 155.31 acres.

Parcel 6:

All of Rosemont Subdivision, a subdivision of a portion of Section 9, Township 1 South, Range 31 West, according to plat recorded in Plat Book 1 at Page 4 of the public records of Escambia County, Florida;

AND

All of first Addition to Rosemont Subdivision, a subdivision of a portion of Section 9, Township 1 South, Range 31 West, according to plat recorded in Plat Book 1 at Page 9 of the public records of Escambia County, Florida.

Parcel 7:

Commencing at the Northeast corner of Section 16, Township 1 South, Range 31 West, Escambia County, Florida; thence run South along the East line of said Section 16 for 2643.09 feet; thence 90°00'59" right for 2667.38 feet; thence 90°13'17" right for 2640.31 feet; thence 89°51'33" right for 2655.93 feet to the Point of Beginning, containing 161.42 acres.

Parcel 8:

Commencing at the Northeast corner of Section 16, Township 1 South, Range 31 West, Escambia

> County, Florida; thence run South along the East line of said Section 16 for 2643.09 feet; thence 90°00'59" right for 1333.69 feet to the Point of Beginning; thence continue along same line for 2671.02 feet; thence 89°57'06" left for 1312.16 feet; thence 1°26'06" right for 351.44 feet to the Northerly right of way line of U. S. Highway No. 90 (200' R/W Mobile Highway); thence 62°07'00" left and along said right of way for 524.35 feet; thence 119°01'00" left for 605.29 feet; thence 90°09'00" right for 870.75 feet; thence 89°28'58" left for 645.85 feet; thence 89°46'53" right for 1335.40 feet; thence 89°54'34" left for 660.43 feet to the Point of Beginning, containing 65.18 acres.

is a good title as against the claims or purported claims of the Defendant, Jack D. Kelly, and all other parties claiming by, through, under, or against him; and all other parties having or claiming to have any right, title, or interest in that property; and of all persons claiming by, through, or under Defendant since the filing of the Notice of Lis Pendens; and those claims or purported claims are canceled; and title to the property is forever quieted in the Plaintiff, Tree Farm Development Corporation.

2. All of the claims, counterclaims, and defenses of the Defendant, Jack D. Kelly, in each of the several consolidated cases, shall be and the same are hereby dismissed with prejudice.

3. This Court reserves jurisdiction for purposes of awarding costs and such attorneys' fees as may be appropriate.

DONE AND ORDERED in chambers at Pensacola, Escambia County, Florida, this 16th day of June, 1994.

/s/ Joseph Q. Tarbuck
JOSEPH Q. TARBUCK
CIRCUIT COURT JUDGE

Conformed Copy to:

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Defendant's address:

Jack D. Kelly
3331 Summit Blvd.
Apt. 87
Pensacola, FL 3250322

IN THE CIRCUIT COURT IN AND FOR
ESCAMBIA COUNTY, FLORIDA

TREE FARM DEVELOPMENT
CORPORATION, a foreign
corporation,

Plaintiff,

vs. CASE NO. 91-0309

JACK KELLY,

Defendant.
_____ /

**ORDER ON PLAINTIFF'S MOTION
FOR SUMMARY FINAL JUDGMENT**

Maple Leaf Development Corporation, hereinafter referred to as "Maple Leaf" was incorporated as a Florida corporation in April of 1970. On July 1, 1971, Maple Leaf acquired title to approximately 1080.42 acres as well as Rosemont Subdivision and the First Addition thereto.

On or about December 3, 1971, Maple Leaf entered into an agreement entitled "Agreement and Plan of Reorganization" with Tree Farm Development Corporation, a Delaware corporation, hereinafter referred to as "Tree Farm" and five individuals, Jack D. Kelly, Abraham L. Pierce, Emory O. Williams, Jr., George G. Phillips, Jr., and E. D. Bob Pierce. The agreement basically provides for the merger of Maple Leaf into Tree Farm. About January 18, 1972, Tree Farm and Maple Leaf entered into an Agreement of Merger. Item Four of the Agreement of Merger provides as follows:

> This Agreement and Plan of Merger shall be filed with the Secretary of State of Delaware and

> with the Department of State of Florida and the merger provided for herein shall become effective on the date on which the last act required to complete said merger under the respective laws of Delaware and Florida is performed.

The Agreement of Merger was signed by the President of each entity, Kelly signing as President of Maple Leaf, and each was attested to by each Secretary. The Agreement of Merger was filed with the Office of the Secretary of State of the State of Florida on February 1, 1972, and the same was also filed in the Offices of the Department of State of the State of Delaware on February 2, 1972, and a Certificate as to the merger was filed in the public records of Escambia County, Florida, on February 11, 1972, and said Agreement was also filed with the Recorder of Deeds in Delaware on February 2, 1972.

In connection with the Agreement of Merger, each of the Maple Leaf shareholders, including Jack D. Kelly, executed, sealed and delivered a General Release dated January 28, 1972.

On or about November 14, 1977, the Barnett Bank of Pensacola, formerly the First Bank & Trust Company of Pensacola, executed and delivered a Special Warranty Deed to Tree Farm as to the property therein described which purports to be the Rosemont Subdivision and the First Addition thereto. Defendant, Jack D. Kelly, has filed numerous documents in the public records of Escambia County, Florida, wherein he claims to be the owner of some or all of the acreage and subdivision property. Tree Farm filed this suit on January 22, 1991, seeking to quiet title to all of the acreage and subdivision property owned by Tree Farm.

Prior to the quiet title suit being filed, Kelly filed suit in Leon County, Florida, in September of 1990, wherein the relief sought was vacation of the merger. An order was entered in Leon County transferring the case to Escambia County, which order was appealed by Kelly to the First District Court of Appeal, the Florida Supreme Court, and the United States Supreme Court, each court ruling against Kelly. In 1990, Kelly also filed suit against Tree Farm in the form of a "Petition to Implement Protective Measures". An order was entered in September 30, 1992, consolidating said action with this quiet title action, which order was also appealed by Kelly to the First District Court of Appeal and the Florida Supreme Court, resulting in decisions adverse to Kelly. On September 29, 1993, an order was entered consolidating the two suits instituted by Kelly with the quiet title suit instituted by Tree Farm, which order Kelly also appealed to the First District Court of Appeal which dismissed the same and the Florida Supreme Court denied Kelly's petition for review. The issues presented in all three cases are identical in nature and the decision made herein shall be dispositive of all such issues.

Kelly, individually, and as President of Maple Leaf, along with the other stockholders of Maple Leaf signed the Agreement and Plan of Reorganization and Kelly, as president of Maple Leaf, along with the Secretary, Emory O. Williams, Jr., also signed the Agreement of Merger. Further, Defendant released any claim he had to his shares or any other interest he may have in and to Maple Leaf to Tree Farm.

According to the corporation laws of both Delaware and Florida, the merger became effective on February 2,

1972, and Maple Leaf ceased to exist and Tree Farm was the owner of all property previously owned by Maple Leaf. The numerous documents or claims filed by Kelly in the public records of Escambia County might be construed to be clouds on the title of the real property now owned by Tree Farm and therefore Tree Farm is entitled to bring this quiet title action.

There is no contention that Kelly claims adverse possession inasmuch as he is not in possession of the property nor has he ever been in possession of the property nor has Kelly paid the ad valorem taxes on said property since said property was acquired by Tree Farm in February of 1972. The Notice of Lis Pendens dated May 7, 1979, and the numerous affidavits or documents do not cite any legal or factual basis upon which Kelly can properly assert any claim of title to the property in question and, furthermore, all of the aforesaid have now become moot and unenforceable as a matter of law inasmuch as Kelly did not institute any action within one year of filing of each of the aforesaid documents.

Further, Kelly should not now be permitted to institute a claim that the merger was never completed inasmuch as he has received the fruits thereof. Further, Kelly should be barred by the equitable doctrines of estoppel and laches since he waited over eighteen and one-half years before instituting suit to vacate or have declared illegal the merger. Further, pursuant to F.S. 95.11(3)(p) any suit with regard to matters surrounding the merger should have been brought within five years of discovery by Kelly of facts giving rise to a defective merger. In this regard, Kelly himself has documented his knowledge of the existence of such a prospective claim inasmuch as it is

clear that as of January 17, 1979, Kelly was advised by the Honorable Curtis Golden, State Attorney, First Judicial Circuit of Florida, that a grand jury has considered his various allegations and had determined that there was no basis for any kind of criminal action arising out of the merger. In said correspondence from Mr. Golden, Kelly was further advised that his grievances, if any, were civil and not criminal in nature.

It appears further that Kelly has made claim that a fraud was practiced upon him by the other shareholders of Maple Leaf, particularly Emory O. Williams, Jr. and George G. Phillips, Jr. F.S. 95.11 provides that a legal or equitable action founded on fraud shall be commenced within four years. Because of some changes in 1975 with respect to the statute of limitations in existence in 1972, it appears that actions grounded upon fraud must be, in any event, instituted within twelve years after the date of the commission of alleged fraud, regardless of the date the fraud was or should have been discovered. Initially, it should be noted that Kelly has not plead claims of misrepresentation and fraud with the particularity required by Florida law. However, even if properly plead, any action on fraud is barred if filed later than February 3, 1984. As indicated, Kelly's action was first commenced in 1990.

In summary, Kelly's claim is barred because he was not seized or possessed of the property within seven years prior to the commencement of his action. Any liens or claims filed by Kelly prior to the filing of his first suit in 1990 have been time-barred. The doctrines of laches and estoppel are a bar to Kelly's claim inasmuch as he did not act promptly in judicially asserting the invalidity

of the merger. Also, an examination of all of the agreements entered into between Maple Leaf and Tree Farm clearly indicate that Kelly was in agreement therewith, signed all of the necessary documents, and realized the fruits of the merger. An examination of Kelly's counterclaim and affirmative defense will readily show that the claims made therein are insufficient as a matter of law. It is therefore

ORDERED AND ADJUDGED that motion of Plaintiff, TREE FARM DEVELOPMENT CORPORATION, for summary judgment, be, and the same is hereby granted. That Kelly's counterclaim and affirmative defenses be, and the same are hereby dismissed. That counsel for Plaintiff shall prepare an appropriate summary final judgment quieting title in Plaintiff in and to the property described in the complaint filed herein.

DONE AND ORDERED at Pensacola, Escambia County, Florida, this 3rd day of June, 1994.

/s/ Joseph Q. Tarbuck
JOSEPH Q. TARBUCK,
CIRCUIT JUDGE

Conformed copies to:

Philip A. Bates, Esq.

John Kevin Griffin, Esq.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

October 13, 1992

Mr. Dennis K. Larry
125 West Romana St.
P.O. Box 13010
Pensecola [sic], FL 32591-3010

Re: Jack David Kelly, etc.
v. Tree Farm Development Corporation, et al.
No. 92-327

Dear Mr. Larry:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Very truly yours,

/s/ William K. Suter
William K. Suter, Clerk

Supreme Court, U.S.
FILED
JAN 16 1996
CLERK

(3)

No. 95-882

In The
Supreme Court of the United States
October Term, 1995

JACK DAVID KELLY, Individually, as the Original Sole Owner of MAPLE LEAF DEVELOPMENT CORPORATION and as the President/ Chairman and Shareholder of MAPLE LEAF DEVELOPMENT CORPORATION, "PRO SE,"

Petitioner,

versus

TREE FARM DEVELOPMENT CORPORATION; EMORY O. WILLIAMS, JR.; THE ESTATE OF GEORGE G. PHILLIPS, JR.; E. D. BOB PIERCE; and THE ESTATE OF ABRAHAM L. PIERCE,

Respondents.

Petition For Writ Of Certiorari
To The Supreme Court Of Florida

Supplemental Brief To
Petition For Writ Of Certiorari

Jack David Kelly, Pro SE
3331 Summit Blvd., # 87
Pensacola, FL 32503
(904) 438-4785
Petitioner, Pro SE

25 pp

QUESTIONS PRESENTED FOR REVIEW

In accordance with Rule 15.2, Rules of the Supreme Court of the United States, the appellant submits that the following questions more accurately present the questions which would be reviewed by this court in this supplementary brief to writ of certiorari.

Whether the actions of the Florida courts violated and deprived Jack David Kelly, individually, as the original sole owner, the president/chairman and shareholder of Maple Leaf Development Corporation, plaintiff their rights under the United States Constitution, State Constitution and Florida Statutes?

The rights of Article III of the Constitution of the United States of America.

Principle 181, from Article III.2.2 provides in all cases in which a state might happen to be a party, the Supreme Court shall have original jurisdiction.

Principle 171, from Article III.2.1 provides the federal courts shall have jurisdiction over any questions arising under the treaties or agreements made by authorities or officers of the United States.

Federal Jurisdiction provides uniform interpretation of treaties for differing interpretation of the states.

Principle 169, from Article III.2.1 provides the federal courts have jurisdiction over any question concerning the Constitution of the United States. This gives the people the right to take any case involving a constitutional question directly to the federal courts.

Principle 168, from Article III.2.1 provides that the administration of the judicial power shall extend to all cases both in law and in equity. This provision provides the federal courts the right to handle all federal cases whether they involve principles of law or principles of equity. No legislative act, therefore contrary to the Constitution can be valid. The courts must declare the sense of the law and not judgment.

Principle 166, from Article III.1 provides the judges of both the Supreme Court and the inferior courts shall hold their offices during good behavior. To secure a steady, upright and impartial administration of the laws...

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JURISDICTION

If it pleases the court Jack David Kelly, individually, as the original sole owner of Maple Leaf Development Corporation and as the President/Chairman and Shareholder of Maple Leaf Development Corporation moves this honorable court to consider this supplemental brief calling attention to new cases, new legislation and other intervening matter, new matter, suppressed and concealed matter not considered or available at the time of the party's last filing.

Pursuant to the questions presented for review and the rights of this jurisdiction provisions the following, Jurisdiction is established for this instant case. The federal court has jurisdiction over any question concerning the Constitution of the United States.

This gives the people the RIGHT to take any case involving a constitutional question directly to the federal courts.

Even though the Founders emphasized that the jurisdiction of the state courts was to be kept entirely separate from that of the federal courts, if a Constitutional question is raised during the litigation of a state case, the matter can be immediately referred to the federal courts for a decision.

One question answered by the Founders in connection with the provision was as follows: "Why must constitutional questions always be referred to a federal court?"

The Federal Judiciary is the exclusive guardian of the constitution. Laws must conform to the Constitution. "The Constitution ought to be the standard of construction for the laws, and that wherever there is an evident opposition, the laws ought to give place to the Constitution."

1. Principle 254 from the Fourteenth Amendment provides: "No state shall deprive any person of life, liberty, or property without due process of law."

"Due Process" means a full hearing as provided by law. The participating attorneys and lower court judges did not allow and suppressed and thereby concealing known compelling evidence of ultimate controlling relevant facts confirming without a doubt the charges of the plaintiff in the lower courts of fraud and deliberate misrepresentation of the proposed merger agreement and violation of the cited questions presented for review by color of law in breach of their duties and responsibilities in connection with claims under due

process clause and civil rights act for which a private citizen is seeking damages or redress because of improper governmental intrusion into their life within the preview of the Fourteenth Amendment and 42 U.S.C.A. § 1983 with fraud on the court.

See the pattern of interference by judicial machinery performing bias and prejudicial adjudication, by preventing Jack David Kelly, etc. from fairly presenting his case or defense of the wrongfully filed title action that is supported by unequivocal and compelling evidence in pretrial proceedings that consisted of suppressing relevant, controlling evidence and conduct so egregious that it underminded the integrity of the judicial process.

Citing Stone v. Stone, ALASKA, 647 P. 2d 582, 586.

Unequivocal compelling relevant written evidence existed and was illegally not admitted, concealed and suppressed, as some examples, see all Exhibits, specifically pointing out Affidavit dated May 20, 1994 by the Horizon Bank of Florida, formerly known as Pensacola Loan and Savings Bank to lower court Judge Joseph Tarbuck during the illegal and unconstitutional summary judgment hearing in violation of all the rights and constitutional provisions cited and provided by the constitution of the U.S. by acts of color of law.

2. Principle 255 from the Fourteenth Amendment provides: "No state shall deny to any person who lives within its jurisdiction the equal protection of the laws."

This provision guarantees the RIGHT to every person (not just citizens) living within a state to the equal protection of the laws.

3. Principle 228 from the Fifth Amendment provides: "No person shall be deprived of life, liberty, or property without due process of law."

This provision guarantees the RIGHT of every American against the taking of his life, liberty, or property without due process of law.

This same provision is included in the Fourteenth Amendment to protect United States citizens from a loss of their rights by any of the states.

4. Principle 169 from Article III.2.1 provides: "The Federal Courts shall have jurisdiction over any question concerning the constitution of the United States."

This gives the people the RIGHT to take any case involving a constitutional question directly to the federal courts.

Laws must conform to the Constitution. "The Constitution ought to be the standard of construction for the laws, and that wherever there is an evident opposition, the laws ought to give place to the Constitution."

5. Principle 170 from Article III.2.1 provides: "The federal courts shall have jurisdiction over any question arising under the laws of the United States."

This provision gives the people of the United States the RIGHT to appeal to the federal courts whenever a case involves the interpretation or enforcement of a law of the United States.

6. Principle 181, from Article III.2.2 provides in all cases in which a state might happen to be a party, the Supreme Court shall have original jurisdiction.

7. Principle 171, from Article III.2.1 provides the federal courts shall have jurisdiction over any questions arising under the treaties or agreements made by authorities or officers of the United States.

Federal Jurisdiction provides uniform interpretation of treaties for differing interpretation of the states.

8. Principle 169, from Article III.2.1 provides the federal courts have jurisdiction over any question concerning the Constitution of the United States. This gives the people the right to take any case involving a constitutional question directly to the federal courts.

9. Principle 168, from Article III.2.1 provides that the administration of the judicial power shall extend to all cases both in law and in equity. This provision provides the federal courts the right to handle all federal cases whether they involve principles of law or principles of equity. No legislative act, therefore contrary to the Constitution can be valid. The courts must declare the sense of the law and not judgment.

10. Principle 166, from Article III.1 provides the judges of both the Supreme Court and the inferior courts shall hold their offices during good behavior. To secure a steady, upright and impartial administration of the laws...

STATEMENT OF THE CASE

Substantial grounds in support of the facts that necessitate the United States Supreme Court exercise its supervisory powers is the continuing fraud and misrepresentation that Tree Farm Development Corporation, etc. has practiced to conceal the fact that the proposed merger was not effective is.

The first filed action was a declaratory judgment action with accounting and specific performance filed by Jack David Kelly, individually, as the original sole owner of Maple Leaf Development Corporation, as the President/Chairman and Shareholder of Maple Leaf Development Corporation to set aside the fraudulently proposed merger between Maple Leaf Development Corporation and Tree Farm Development Corporation, a foreign corporation.

Item 1. Exhibit "A" - Tree Farm Development Corporation did with intent to defrauds, possess and utter forged instruments, namely the Annual Corporate Return of 1975, identified as Exhibit "A", hereto attached and made a part hereof, therefore all property, dealings of any kind, releases and mortgages, etc. of Maple Leaf Development Corporation thenceforth is void.

The officers and directors of Tree Farm Development Corporation knowingly falsely altered the annual return of Tree Farm Development Corporation. This constitutes forgery.

This false representation was made for the illegal purpose of concealing the fact that all of the issued stock of Maple Leaf Development Corporation was assigned, pledged to Pensacola Loan and Savings Bank now known as the Horizon Bank of Florida.

Item 2. Exhibit "B" - See Affidavit dated May 20, 1994, of William D. Nobles, III identified as Exhibit "B" hereto attached and made a part hereof.

This illegal, forged annual return of Tree Farm Development Corporation is proven to be deliberate by letter of May 8, 1980, by George G. Phillips, Jr.

Item 3. Exhibit "D" - See letter dated May 8, 1980, from George G. Phillips, Jr. verified beyond any doubt that the letter of May 30, 980 to Robert L. Stone, an attorney for Mr. Nobles and Pensacola Loan and Savings Bank now known as the Horizon Bank of Florida, from John F. Kibbe (Tree Farm Development Corporation) is false beyond any doubt.

The letter is an attempt to cover up by trick, scheme, device, deliberate misrepresentation and fraud thereby none of the false dealing thenceforth in Maple Leaf Development Corporation assets was effective. Item 3, is identified as Exhibit "D" hereto attached and made a part hereof.

Item 4. Exhibit "D" - See letter dated May 13, 1980, from Robert L. Stone representing the bank to Mr. W. D. Nobles and the bank, reference the untrue letter of May 30, 1980 by John F. Kibbe, individually and Tree Farm Development Corporation, and their dates.

These illegal actions are prohibited by 18 U.S.C. § 1001, Florida Statutes § 726.01, 726.07, 726.08, 726.09 and 42 U.S.C.A § 1983.

Item 5. Exhibit "F" - See letter dated October 29, 1990 from Glenn R. Gronlund, Esq., general counsel for Chelsea Title and Guaranty Company to Phillip A. Bates, attorney for Tree Farm Development Corporation, etc. the defendants. Identified as Exhibit "F", hereto attached and made a part hereof.

In spite of the attorney knowing this as well as his client, in violation of 57.105 (1) Florida Statutes - An attorney is personally responsible for his conduct unless he is in good faith based upon representations of the client, wrongly and illegally filed this type title action on the same issues of the first filed case, the declaratory judgment action, with accounting and specific performance to set aside the filed merger agreement and has illegally attempted to claim ownership, title through color of title and color of law. The appearance or semblance, without the substance, of legal right, misuse of power, possessed by virtue of state law and made possible only because wrongdoers is clothed with authority of state, is action taken under "color of state law".

Atkins v. Lanning D.C. OKL., F. SUPP. 186, 188.

In the context of federal civil rights statutes or criminal law, as this instant case, it is under the fourteenth amendment.

Timson v. Weiner, D.C. OHIO, 395 F. SUPP. 1344, 1347 and is in this instant case pretense of law and includes actions of officers who undertake to perform their official duties.

Thompson v. Baker, D.C. ARK., 133 F. SUPP. 247; 42 U.S.C.A. § 1983.

The illegal acts taken by the private individuals of Tree Farm Development Corporation, Tree Farm Development Corporation and

the representing attorney Phillip Bates under "color of state law" for the purposes of deprivation of the plaintiff's civil rights with significant state involvement is attached to their illegal acts violating 18 U.S.C. § 1001; 42 U.S.C.A. § 1983.

Wagner v. Metropolitan Nashville Airport Authority, C.A. TENN., 772 .2d 227, 229.

The unlawful acts was done while the lower courts officials of the State of Florida, Judges and Attorneys pretending to act in the performance of their official duties with their unlawful acts consisting of abuse and misuse of power which is possessed by the officials only because they are officials and the unlawful acts committed would not have occurred but for the fact that the persons committing them was an official exercising his official powers outside the bounds of lawful authority of 42 U.S.C.A. § 1983 and color of office by one who has no such right.

Kiker v. Pinson, 120 GA. APP. 784, 172 S.E. 2d 333, 334 and color of title.

Hewth v. Farrer, C.C.A. TEX., 94 .2d 654, 658.

That which is a semblance or appearance of title, but is not title in fact or in law.

McCoy v. Lowrie, 42 WASH. 2d 24, 253 P. 2d 415, 418.

This devious scheme, trick and false representation was attempted to be done without the substance of legal right constitutes illegal acts of the officers and directors of Tree Farm Development Corporation as a corporation and as individuals.

The material facts giving rise to Tree Farm Development Corporation's misrepresentation and the named individuals that are involved are straightforward and uncontroverted and supported by documentary evidence of deliberate deception.

1. Willfully falsifying the entry on the Tree Farm's corporate annual return document that was furnished to the Department of State, Division of Corporations and the State of Florida, that W. D. Nobles was a director of Tree Farm Development Corporation.

2. Deliberately concealing the material fact that Maple Leaf Development Corporation's stock was assigned, and pledged to Pensacola Loan and Savings Bank of Pensacola, now known as Horizon Bank of Florida.

3. Willfully concealing the fact that the proposed merger of Maple Leaf Development Corporation and Tree Farm Development

Corporation could not and did not become effective.

This fraudulent and false listing of Mr. Nobles allowed the records to appear the stock was not assigned and pledged, therefore, enabling the owners of Tree Farm Development Corporation to falsely deal in the property of Maple Development Corporation.

In violation of : 18 U.S.C.§ 1001 - Making a false statement to an Agency of the United States; Chapter 726, F.S. - Fraudulent Conveyances, Sales and Loans; Chapter 726.01, F.S. - Void the Fraudulent Conveyances, Sales and Loans; Chapter 726.07, F.S. - Fraudulent Conveyance Void Against Subsequent Purchasers; Chapter 726.08, F.S. - Conveyance with Power of Revocation Void Against Subsequent Purchasers; Chapter 726.09, F.S. - Fraudulent Loans Void.

Citing the Aztec Motel, Inc. Etal. v. State ex rel. Earl Faircloth, Attorney General of the State of Florida Supreme Court of Florida. Defendant moved to dismiss proceeding instituted against them under statutes authorizing forfeiture of the charter of a corporation if one or more individuals who are engaged in or associated with certain activities represent, control or manage the corporation.

The State of Florida lower court judges and attorneys involved in this instant case and all of its interrelated relevant cases and their facts are officers of the lower courts of the State of Florida and the said courts is clothed with authority of the state, pure truth is this is synonymous with the concept of "state action" under the Fourteenth Amendment, Principle 254 from the Fourteenth Amendment.

"Due Process" means a full hearing as provided by law. The participating attorneys and lower court judges did not allow and suppressed and thereby concealing known compelling evidence of ultimate controlling relevant facts confirming without a doubt the charges of the plaintiff in the lower courts of fraud and deliberate misrepresentation, breach of contract of the proposed merger agreement and violation of the cited questions presented for review by color of law in breach of their duties and responsibilities in connection with claims under due process clause and civil rights act for which a private citizen is seeking damages or redress because of improper governmental intrusion into their life within the preview of the Fourteenth Amendment and 42 U.S.C.A. § 1983 with fraud on the court.

See the scheme to interfere with judicial machinery performing

bias and prejudicial adjudication, by preventing Jack David Kelly, etc. from fairly presenting his case or defense of the wrongfully filed title action that is supported by unequivocal and compelling evidence in pretrial proceedings consisted of suppressing relevant controlling evidence and conduct so egregious that it underminded the integrity of the judicial process.

Citing Stone v. Stone, ALASKA, 647 P. 2d 582, 586.

Unequivocal compelling, relevant, written, documented evidence existed and was illegally not admitted, concealed and suppressed, as some examples, see all Exhibits, specifically pointing out Affidavit dated May 20, 1994 by the Horizon Bank of Florida, formerly known as Pensacola Loan and Savings Bank to lower court Judge Joseph Tarbuck during the illegal and unconstitutional summary judgment hearing in violation of all the rights and constitutional provisions cited and provided by the constitution of the U.S. by acts of color of law.

ARGUMENTATION

The Supreme Court has no common law jurisdiction and it can only exercise the jurisdiction prescribed by the Constitution. Jurisdiction does exist in this case due to the state's court of last and the inferior lower courts violation of, by color of law, the plaintiff, a citizen's constitutional rights of law and equity.

Therefore this instant case could not be more substantially federal, as it involves the plaintiff, a citizen fundamental rights of the Constitution of the United States of America of law and equity of which there is no small concern and of great public concern.

Wherefore the plaintiff, a citizen of the United States of America ask this Honorable Court, the Supreme Court of the United States to exercise its supervisory powers and reverse the judgment and remand to trial court for further proceedings to declare the sense of the law and not judgment. Article III Jurisdiction of the Federal Court, Principle 168 from Article III.2.1.

CONCLUSION

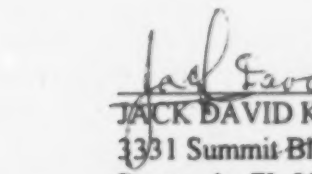
The proposed merger agreement between Maple Leaf Development Corporation and Tree Farm Development Corporation was a binding agreement, as a matter of law, and not subject to repudiation by either party until or unless the performance of a condition failed.

Such failure occurred later in time from the date of the charged statement, the failure of these charged conditions later invalidated the proposed merger agreement between Maple Leaf Development Corporation and Tree Farm Development Corporation.

Therefore the lower courts of Florida judgments, decrees, etc., was certainly prejudicial without authority, color of law and bias.

Wherefore the Writ of Certiorari should be allowed, the judgments, decrees, etc., should be reversed and all the related cases consolidated and remanded for trial with this honorable court of America (U.S.) exercising its supervisory and jurisdictional power for truth and justice, the constitutional rights of Jack David Kelly and Maple Leaf Development Corporation.

The plaintiff of the first filed case respectively submits this request to this Honorable Court for truth and justice.



JACK DAVID KELLY, PRO SE
3331 Summit Blvd., #87
Pensacola, FL 32503
(904) 438-4785

Appendix - 1

EXHIBIT "A"

Appendix - Pursuant to Fed. R. App. P. 30.

Date - 1975

Corporation Annual Report, Identified as Exhibit "A"

Tree Farm Development Corporation — Date of Incorporation
23 Lexington Ave. — 12/14/1971
Cambridge, Mass. 02128

Individuals:

1.	Edward L Diehl President/Director	23 Lexington Avenue Cambridge, Mass.
2.	Abraham Pierce Vice President/Director	1007 W. Zarragossa Pensacola, Fla.
3.	George Phillips Secretary/Director	222 South Tarragona Pensacola, Fla.
4.	John F. Kibbe Treasurer	23 Lexington Avenue Cambridge, Mass.

See Addendum to Corporate Annual Report, identified as Exhibit "A".

100 Shares at $60.00 (Inaccurate)

Capital Stock Type: Common Par $1.00/Share 15,000

Declaration of Truth & Correctness (Copy Illegible)

Signed John F. Kibbe

Title: Treasurer

Date: May 1975

ADDENDUM TO CORPORATION ANNUAL REPORT
1975

SCHEDULE I: Officers of Tree Farm Development Corporation

Name	Title	Address
Edward L Diehl	President	23 Lexington Avenue Cambridge, Mass.
Abraham Pierce	Vice President	1007 W. Zarragossa Pensacola, Fla.
George Phillips	Secretary	222 South Tarragona Pensacola, Fla.
John F. Kibbe	Treasurer	23 Lexington Avenue Cambridge, Mass.

SCHEDULE II: Directors of Tree Farm Development Corporation

Edward L. Diehl	23 Lexington Avenue, Cambridge, Mass.
Robert L. Smith	140 Worthen Road, Lexington, Mass.
David Bird	66 Fresh Pond Lane, Cambridge, Mass.
George Phillips	222 South Tarragona, Pensacola, Fla.
Abraham Pierce	1007 W. Zarragossa, Pensacola, Fla.
William D. Nobles, Jr.	180 North Palafox St., Pensacola, Fla.

EXHIBIT "D"

May 13, 1980 - Letter from Robert L. Stone of Harrell, Wiltshire, Stone and Swearingen to Mr. W. O. Nobles, Jr., Vice President Pensacola Loan and Saving Bank, 180 North Palafox Street, Pensacola, Florida, Now known as the Horizon Bank of Pensacola

May 8, 1980 - The Letter from George Phillips to Robert L. Stone, Attorney for Pensacola Loan and Savings Bank now known as the Horizon Bank of Pensacola.

May 13, 1980 - Letter from Robert L. Stone of Harrell, Wiltshire, Stone and Swearingen to Mr. John F. Kibbe, 23 Lexington Avenue, Cambridge, Massachusetts. Re: Tree Farm Development Corporation

June 10, 1980 - Letter from Robert L. Stone of Harrell, Wiltshire, Stone and Swearingen, Law Firm representing Pensacola Loan and Savings Bank to Pensacola Loan and Savings Bank now known as Horizon Bank of Florida, identified as Exhibit "D" hereto attached and made a part hereof, referencing Letter of May 30, 1980 from John F. Kibbe, identified as Exhibit "D" hereto attached and made a part hereof, in an attempt by Tree Farm Development Corporation to conceal, cover up the deliberate misrepresentation made by them, Tree Farm Development and every listed officer and director individually and personally by trick, scheme and device of the fact that the proposed merger between Maple Leaf Development Corporation and Tree Farm Development Corporation was not effective and fraudulently on file with the State of Florida, the Secretary of the State of Florida.

October 17, 1990 - See Case No. 79-1862-CA-01, Division:"K". IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA, PENSACOLA LOAN & SAVINGS BANK, a Florida Industrial Savings Bank, (now known as the Horizon Bank of Florida), Plaintiff, vs. EMORY O.

WILLIAMS and GLORIA V. WILLIAMS, Husband and Wife, ABE PIERCE and VERA PIERCE, Husband and Wife, E. D. PIERCE, and GEORGE G. PHILLIPS, Defendants, vs. TREE FARM DEVELOPMENT CORPORATION, Garnishee, identified as Exhibit "E" hereto attached and made a part hereof. Documentary supplementary ultimate facts of proof of the misrepresentation which will be supplied and proven beyond any doubt by ultimate, controlling, relevant facts presented in oral argument.

December 20, 1995 - See Case No. 87,039. Appeal from DCA Case No. 94-04303 and the Second Judicial Circuit, In and for Leon County, Florida, Case No. 93-3117. Supreme Court of Florida, JACK DAVID KELLY, Appellant, v. ALBERT PENSON, in his individual capacity and as a Partner in the Law firm of HILTON, HILTON, KOLK & PENSON, P.A., Appellees, identified as Exhibit "E" hereto attached and made a part hereof. Additional facts of relevant proof of misconduct by attorneys and lower courts involved will be supplied and proven beyond any doubt by ultimate, controlling, relevant facts presented in oral argument.

January 14, 1991 - Letter from Pensacola Loan and Savings Bank now known as the Horizon Bank of Florida, identified as Exhibit "F" hereto attached and made part hereof, confirming again to Mr. Ed Stripling, Financial Administration Division of Banking, The Capitol, Suite 1402, Tallahassee, Florida 32301 the fact of the above. Note: If Tree Farm Development Corporation forged Document (Annual Return of 1975) were true then the Financial Administration of Banking would certainly prohibit the bank loaning Maple Leaf Development Corporation money, in violation of banking laws and conflicts of interest, etc. Being a forged document, this violated all statutes of misrepresentation, fraud and racketeering and violation of Florida corporation laws, etc.

May 20, 1994 - Affidavit of William D. Nobles, III of Horizon Bank of Florida, which is Exhibit "B", confirming the uncontestable facts of the above fraud, misrepresentation by trick, scheme and devices of Tree Farm Development Corporation as a corporation and personally as individuals of Tree Farm Development criminal activity, racketeering and conspiracy.

EXHIBIT "D"

HARRELL, WILTSHIRE, STONE AND SWEARINGEN
ATTORNEYS AT LAW
201 EAST GOVERNMENT STREET
PENSACOLA, FLORIDA 32598
MAY 13, 1980

Mr. W. D. Nobles, Jr.
Vice President
Pensacola Loan & Savings Bank
180 North Palafox Street
Pensacola, Florida

Re: Maple Leaf Development Corporation

Dear Jack:

Enclosed herewith please find a letter from George Phillips to me dated May 8, 1980, dealing with Maple Leaf Development Corporation and Tree Farm Development Corporation. I believe the letter is self-explanatory and serves to explain that your father was not an officer, stockholder or director in either Maple Leaf Development Corporation or Tree Farm Development Corporation.

I trust this information will prove helpful to you.

Yours very truly,
/s/ Bob
ROBERT L. STONE

RLS/pak
Enclosure

EXHIBIT "D"

George G. Phillips, Jr., P.A.
Attorney at Law
212 East Church Street · Pensacola, Florida 32501
Area Code 904-498-1484
May 8th, 1980

Robert L. Stone, Esquire
Attorney at Law
201 East Government Street
Pensacola, Florida 32501

Dear Bob:

Tree Farm Development Corporation is a Delaware corporation authorized to do business in Florida and was merged with

Maple Leaf Development Corporation, a Florida corporation whose officers and directors were five local Pensacola people. They were Emory O. Williams, Jr., A. L. Pierce, Bob Pierce, Jack Kelly and the undersigned.

After the merger of Maple Leaf Development Corporation with Tree Farm Development Corporation, the officers of Tree Farm Development Corporation were Mr. Ed Diehl, Mr. Robert Smith, and Mr. Eric Oodleifson, all of Cambridge, Massachusetts, and Mr. A. L. Pierce and the undersigned.

Mr. W. D. Nobles, Jr., of Pensacola, Florida, was a person upon whom the members of Maple Leaf Development Corporation called upon for counsel and guidance and financial assistance. Mr. Nobles assistance and help was very beneficial to all of us collectively and individually. At no time however was Mr. Nobles a stockholder, officer or director of either Maple Leaf Development Corporation or Tree Farm Development Corporation. I am certifying this to the best of my knowledge from approximately 1974 through the date of this letter.

I appreciated very much discussing the matter with you in our recent telephone conversation and I am hopeful that this will provide you with the information needed.

Very truly yours,
/s/ George G. Phillips
GEORGE G. PHILLIPS

GGP/cb

EXHIBIT "D"

HARRELL, WILTSHIRE, STONE AND SWEARINGEN
ATTORNEYS AT LAW
201 EAST GOVERNMENT STREET
PENSACOLA, FLORIDA 32598
MAY 13, 1980

Mr. John F. Kibbe
23 Lexington Avenue
Cambridge, Massachusetts

Re: Tree Farm Development Corporation

Dear Mr. Kibbe:

Mr. Jack Kelly, formerly a stockholder in Tree Farm Development Corporation, brought to the attention of Pensacola Loan

& Savings Bank, our client, a Corporation Annual Report filed for the year 1975 by Tree Farm Development Corporation and signed by you as treasurer of that corporation. The Corporation Annual Report has an addendum thereto listing Directors of Tree Farm Development Corporation. The list includes William D. Nobles, Jr. of 180 North Palafox Street, Pensacola, Florida. As you know, Mr. Nobles is Chairman of the Board of Pensacola Loan & Savings Bank. According to Mr. Nobles he has never been a stockholder, officer or director in Tree Farm Development Corporation quite concerned that he is listed on the Annual Report as a Director in view of the fact that Pensacola Loan & Savings Bank has made various loans to Tree Farm Development Corporation.

I would very much appreciate your providing me with whatever information you had in order to prepare the Corporation Annual Report (1975) to include William D. Nobles, Jr. as a Director. If there was anything signed by Mr. Nobles or purported to be signed by Mr. Nobles within the corporate framework of Tree Farm Development Corporation, I would appreciate your providing me with a copy thereof.

I am presuming that the inclusion of the name William D. Nobles, Jr. as a Director in Tree Farm Development Corporation in the annual report above referenced was by mistake. If you reach this conclusion, I would appreciate your confirming that fact by mail.

Thank you for your cooperation.

Yours very truly,
/s/ Robert L. Stone
ROBERT L. STONE

RLS/pak
cc: Mr. Jack Nobles

EXHIBIT "D"

HARRELL, WILTSHIRE, STONE AND SWEARINGEN
ATTORNEYS AT LAW
201 EAST GOVERNMENT STREET
PENSACOLA, FLORIDA 32598
June 10, 1980

Mr. Jack Nobles
Vice President
Pensacola Loan & Savings Bank

180 North Palafox Street
Pensacola, Florida

Re: Tree Farm Development Corporation - Nobles

Dear Jack:

Enclosed herewith please find a copy of a letter from John F. Kibbe on behalf of Tree Farm Development Corporation which in effect states that Mr. Nobles had absolutely nothing to do with the management of Tree Farm Development Corporation and did not serve as a director for that corporation. He explains that Messrs. Pierce and Phillips named him as a director as they were entitled to do but had not discussed it with him and his name was withdrawn.

Yours very truly,
/s/ Robert L. Stone
ROBERT L. STONE

RLS/pak
Enclosure

EXHIBIT "D"

MAY 30, 1980

Mr. Robert L. Stone
Harrell, Wiltshire, Stone and Swearingen
201 East Government Street -- P. O. Drawer 1752
Pensacola, Florida 32598

Dear Mr. Stone,

During a certain period of time that Pensacola shareholders in Tree Farm Development Corporation were entitled to name 3 directors. This was true in 1975 when Mr. Nobles was proposed as a potential director by Messrs. Abraham Pierce and George Phillips, both of Pensacola and shareholders and directors at that time.

Subsequently, when it became known that neither Mr. Phillips nor Mr. Pierce had discussed this with Mr. Nobles, his name was withdrawn. Mr. Nobles did not serve in the capacity of director* in any way. We apologize if this matter has caused him any distress.

One item in your letter of May 13, 1980, needs correction. Tree Farm Development Corporation has never applied for nor has it received any loans from Pensacola Loan & Savings Bank. Should you have anything which would purport that we have made such application or have been granted such loan we would appreciate your forwarding it to us.

Again, we wish to confirm that Mr. Nobles was never asked

to serve as a director nor did he in fact so serve.

Very truly yours,
/s/ John F. Kibbe
John F. Kibbe

TREE FARM DEVELOPMENT CORPORATION
23 LEXINGTON AVENUE·CAMBRIDGE, MASSACHUSETTS

* Statement of Fact by Jack David Kelly, President/Chairman of Maple Leaf Dev. Corp. Note: Maple Leaf Dev. Corp. had made a loan of $69,000 by Pensacola Loan & Savings Bank now known as the Horizon Bank of Florida and all shareholders of Maple Leaf Dev. Corp. jointly and several personally guaranteed the note and as collateral pledged all issued stock of Maple Leaf Dev. Corp. as security May 29, 1971 prior to the proposed merger.

EXHIBIT "F"

Horizon Bank of Florida
January 14, 1991

Mr. Ed Stripling
Financial Administration
Division of Banking
The Capitol, Suite 1402
Tallahassee, Florida 32301

Dear Ed:

Per our telephone conversation of this date, I am enclosing photocopies of various letter concerning Jack Kelly, Tree Farm Development, Maple Leaf Development Corporation. These copies will clarify their relationship with W. D. Nobles, Jr.

Possible this will give you a better understanding of the fact that Mr. Nobles has never been on the Board of Directors of either of those corporations.

I hope this will help you in dealing with Mr. Kelly.

Very truly yours,
/s/ R. G. Barr
R. G. Barr
Executive Vice President

RGB/map
enclosure(s)
cc:file

P.S. Ed, please advise Mr. Kelly that if he continues to bring this

matter up and harass Mr. Nobles, he will leave Mr. Nobles no other choice than to seek legal counsel.

EXHIBIT "B"

Horizon Bank of Florida

The Honorable Judge Tarbuck
Escambia County Circuit Court
190 Governmental Center
Pensacola, FL 32501
STATE OF FLORIDA
ESCAMBIA COUNTY

The undersigned affiant appeared before me this date and he is known to me and he did take an oath that the matters and documents referred to in his statement are true and accurate:

AFFIDAVIT OF WILLIAM D. NOBLES, III

You affiant, William D. Nobles, III, is the son of William D. Nobles, Jr., and the current Senior Vice President, of Horizon Bank, formerly known as Pensacola Loan & Savings Bank. My father in 1975 was chairman of the board of the bank.

I have examined a 2 page document, under the heading "SCHEDULE II: Directors of Tree Farm Development Corporation" my father's name is listed as a director. My father, William D. Nobles, Jr., was not associated with nor a director or officer in Tree Farm Development Corporation. The document as it pertains to my father, is in error.

FURTHER AFFIANT SAYETH NOT

/s/ William D. Nobles, III
WILLIAM D. NOBLES, III

STATE OF FLORIDA
ESCAMBIA COUNTY

The undersigned appeared and signed this document on May 20, 1994, and is personally known to me.

/s/ Ginger E. French
Notary Public
[Seal]

My commission expires:
3-15-98

EXHIBIT "F"

GLENN R. GRONLUND
First Fidelity Bank Building
1301 Atlantic Avenue · Atlantic City, New Jersey 08401
(609) 345-5970

October 29, 1990

Philip A. Bates, Esquire
Bates & Tipton, P.A.
700 South Palafox, Suite 3A
Pensacola, FL 32501

Re: Kelly v. Tree Farm Development Corporation, et al.

Dear Mr. Bates:

We have carefully reviewed the Amended Complaint which has been filed in this action. As I am sure you recognize, this Declaratory Judgment seeks to undo the terms of a certain merger agreement entered into by the various parties. The plaintiff is suing his partners for failing to live up to the terms and conditions of that agreement and to return the parties to where they were prior to that agreement.

As such, there is being no claim made against the title to Tree Farm properties, as such. The only claims are breach of contract actions which are not covered by the title insurance policy.

Accordingly, we must respectfully advise you that there is no title insurance for the claims being alleged by Jack Kelly against Tree Farm Development Corporation. As such, we must decline to give you any instructions as to how may conduct the breach of contract litigation. The construction of the interest of the various parties is dependent upon the Court determining who breached the contract, not whether there was good and sufficient title at issue in the first place. If you have any other additional information with which you would like to acquaint us, perhaps we could review this matter. But as presently presented, there is no cause of action stated for which there is title insurance under the policy issued.

Very truly yours,
CHELSEA TITLE AND GUARANTY COMPANY
By: /s/ Glenn R. Gronlund
Glenn R. Gronlund, Esq.
General Counsel